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THIS DISSERTATION SHOWED THE LEGAL STATUS OF NONPUBLIC SCHOOLS IN THE UNITED STATES. CONCLUSIONS WERE REACHED ON SEVERAL TOPICS BASED UPON A STUDY OF (1) BACKGROUND LITERATURE AND RELATED RESEARCH, (2) THE CONSTITUTIONS AND STATUTES OF THE 50 STATES, AND (3) RELATED COURT DECISIONS. (LP)

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LAW AND THE
NON-PUBLIC SCHOOL (D. ED Dissertation)

A Dissertation
Presented to
the Faculty of the Graduate College
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In Partial Fulfillment
of the Requirements for the Degree
Doctor of Education

by
Gordon R. Werkema
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To his wife, Jacklyn Brumels Werkema, for unusual encouragement and sustenance, the writer dedicates the study.

TABLE OF CONTENTS

CHAPTER PAGE

I. NATURE AND SCOPE OF THE STUDY 1
  Introduction 1
  Statement of the Problem 2
  Justification for the Study 3
  Method of Procedure 5
  Definition of Important Terms 8
    School 8
    Public School 8
    Common School 9
    Private School 9
    Denominational School 10
    Parochial School 10
    Academy 10
    Non-public School 10
  Delimitation of the Study 11
  Organization of the Study 12

II. SELECTED STUDIES OF RELATED PROBLEMS AND REVIEW OF SELECTED BACKGROUND LITERATURE 14
  Selected Studies of Related Problems 14
    Doctoral Dissertations 14
    Publications of the Federal Government 21
    Publications of Learned Societies 23
  Review of Selected Background Literature 27
    Legal Literature 27

CHAPTER PAGE

Books 28

Periodicals 34

III. STATE CONSTITUTIONAL PROVISIONS RELATED TO NON-PUBLIC SCHOOLS 41

State Constitutional References to Non-Public Schools 41

Alabama 41

Alaska 42

Arizona 42

Arkansas 43

California 43

Colorado 44

Connecticut 45

Delaware 45

Florida 46

Georgia 46

Hawaii 47

Idaho 48

Illinois 48

Indiana 49

Iowa 49

Kansas 50

Kentucky 50

Louisiana 51

Maine 52

CHAPTER PAGE

Maryland 52
Massachusetts 53
Michigan 54
Minnesota 54
Mississippi 55
Missouri 55
Montana 56
Nebraska 56
Nevada 57
New Hampshire 57
New Jersey 58
New Mexico 58
New York 59
North Carolina 60
North Dakota 60
Ohio 61
Oklahoma 61
Oregon 62
Pennsylvania 62
Rhode Island 63
South Carolina 63
South Dakota 64
Tennessee 64
Texas 65
Utah 65

CHAPTER PAGE

Vermont 66
Virginia 66
Washington 67
West Virginia 67
Wisconsin 68
Wyoming 68
Summarization of State Constitutional References to Non-public Schools 69
Table I 69
Table II 69
Table III 73
Table IV 73
IV. STATE STATUTORY PROVISIONS RELATED TO NON-PUBLIC SCHOOLS 77
Statutory References to Non-public Schools 77
Alabama 77
Alaska 79
Arizona 80
Arkansas 80
California 82
Colorado 83
Connecticut 84
Delaware 85
Florida 86
Georgia 88

CHAPTER PAGE

Hawaii 89
Idaho 90
Illinois 91
Indiana 91
Iowa 93
Kansas 94
Kentucky 95
Louisiana 97
Maine 98
Maryland 100
Massachusetts 102
Michigan 103
Minnesota 106
Mississippi 107
Missouri 107
Montana 108
Nebraska 109
Nevada 111
New Hampshire 113
New Jersey 115
New Mexico 116
New York 117
North Carolina 119
North Dakota 121
Ohio 122

CHAPTER PAGE

Oklahoma 123

Oregon 123

Pennsylvania 125

Rhode Island 127

South Carolina 129

South Dakota 130

Tennessee 132

Texas 132

Utah 133

Vermont 134

Virginia 135

Washington 137

West Virginia 138

Wisconsin 139

Wyoming 141

Summarization of State Statutory References to Non-public Schools 142

Table V 142

Table VI 142

Table VII 153

Table VIII 153

Table IX 164

Table X 164

V. PARENTAL RIGHTS, RESPONSIBILITIES, AND LIABILITIES INVOLVED IN THE OPERATION OF NON-PUBLIC SCHOOLS 174

CHAPTER PAGE

Rights of Parents 175

The Right to Choose a School 175

The Right to Exert Control Over a Child's Education 179

The Right to Expect Certain Conditions 182

Responsibilities of Parents 184

The Responsibility to Educate 184

The Responsibility to Comply with Regulations 186

The Responsibility for Financial Agreements 187

Liabilities of Parents 188

VI. THE CORPORATE RIGHTS, RESPONSIBILITIES, AND LIABILITIES INVOLVED IN THE OPERATION OF NON-PUBLIC SCHOOLS . . . 193

Rights of Non-Public Schools 193

The Right to Exist 193

The Right to Contract 195

The Right to Select 197

The Rights of Property 201

The Rights of Charter 202

Responsibilities of Non-Public Schools 204

The Responsibility to Protect 204

The Responsibility to Observe Regulations 206

The Responsibility to Meet Obligations 208

Liabilities of Non-Public Schools 211

VII. STATE SUPERVISION AND CONTROL OF NON-PUBLIC SCHOOLS . . 217

General Regulation of Non-Public Schools 219

CHAPTER PAGE

Existence of Non-Public Schools 224
Encouragement of Non-Public Schools 226
Selection of Pupils in Non-Public Schools 230
Contracts in Non-Public Schools 234
Licensing of Non-Public Schools 238
Internal Affairs of Non-Public Schools 243
Curriculum in Non-Public Schools 247
Instructors in Non-Public Schools 252
Zoning Requirements and Non-Public Schools 255

VIII. THE EXTENT TO WHICH THE STATES HAVE BEEN PERMITTED TO AID NON-PUBLIC SCHOOLS 260
Federal Court Cases 260
State Cases 263
  Alaska 263
  Arizona 264
  Arkansas 264
  California 264
  Connecticut 265
  Delaware 266
  Florida 267
  Georgia 267
  Illinois 268
  Indiana 270
  Iowa 270
  Kansas 272

CHAPTER PAGE

Kentucky 273
Louisiana 277
Maine 278
Maryland 279
Massachusetts 280
Michigan 281
Minnesota 281
Mississippi 282
Missouri 283
Nebraska 285
Nevada 287
New Hampshire 287
New Jersey 289
New York 291
North Carolina 296
Ohio 296
Oklahoma 297
Oregon 299
Pennsylvania 299
Rhode Island 302
South Dakota 303
Tennessee 304
Texas 304
Utah 305
Vermont 305

CHAPTER PAGE

Virginia 306
Washington 307
West Virginia 308
Wisconsin 309
IX. SUMMARY AND CONCLUSIONS 311
Summary 311
Conclusions 312
Background Literature and Related Research 312
Constitutions 312
Statutes 313
Court Decisions 313
Parental Rights 313
Parental Responsibilities 314
Parental Liabilities 314
Corporate Rights 315
Corporate Responsibilities 315
Corporate Liabilities 316
Supervision and Control 316
Public Aid 317
BIBLIOGRAPHY. 320
TABLE OF CONSTITUTIONS 328
TABLE OF STATUTES 331
TABLE OF CASES 334

LIST OF TABLES

TABLE PAGE

I. State Constitutional References to Non-Public Schools Concerned With Miscellaneous Matters 70

II. State Constitutional References to Non-Public Schools Concerned With Corporations 71

III. State Constitutional References to Non-Public Schools Concerned With Tax Exemptions 74

IV. State Constitutional References to Non-Public Schools Concerned With Public Aid to Non-Public Schools 75

V. State Statutory Provisions Related to Non-Public Schools Concerned With Supervision 143

VI. State Statutory Provisions Related to Non-Public Schools Concerned With Compulsory Attendance 151

VII. State Statutory Provisions Related to Non-Public Schools Concerned With Curriculum Requirements 154

VIII. State Statutory Provisions Related to Non-Public Schools Concerned With General Welfare of Pupils and Teachers 159

IX. State Statutory Provisions Related to Non-Public Schools Concerned With Aid to Non-Public Schools 165

X. State Statutory Provisions Related to Non-Public Schools Concerned With Miscellaneous Matters 170

CHAPTER I

NATURE AND SCOPE OF THE STUDY

Introduction

In the beginning of educational endeavor in America, all education was of a non-public nature, most of it church related.[1] America was settled by groups from many different countries and a variety of ideas concerning education and church order were brought to the New World by the immigrants. The majority of the founding fathers were of the opinion that the new government should not establish a state religion as was done in several of the European countries. Various forms of establishment of religion and education did develop before the American revolution,[2] but at the time the United States Constitution was written free exercise of religion was the prevailing pattern, rather than the establishment of a particular religion. The principle of separation of church and state, and education also, was set forth in the First Amendment to the Constitution of the United States which stated that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...."[3]

Because the new Constitution of the United States did not mention education specifically, it appeared that the matter of education was to be left to the states, by virtue of the Tenth Amendment to the Constitution, or to private initiative. This study was primarily concerned with education developed by private sources, or non-public education. Relationships of non-public schools to state educational authorities, the courts, statutory law, constitutional provisions, patrons, pupils, and teachers were considered important for study because of historical precedent and the important place of non-public education in the current American educational scene.

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[1] Frederick Eby and Charles Arrowood, The Development of Modern Education (New York: Prentice-Hall, Inc., 1946), p. 159.

[2] R. Freeman Butts and Lawrence A. Cremin, A History of Education in American Culture (New York: Henry Holt and Company, 1956), pp. 14-20.

[3] Ibid., p. 155.

Statement of the Problem

The central problem of the study was to determine the current legal status of the non-public elementary and secondary schools in the United States. A secondary purpose of the study was to develop principles of law related to the organization and operation of non-public schools.

Development of the central problem of the study involved expansion of six subordinate problems. The sub-problems considered were: (1) determination of the status of the non-public school in the constitutions of the fifty states; (2) determination of the status of the non-public school in the statutes of the fifty states; (3) determination of principles of law enunciated by the courts regarding parental rights, liabilities, and responsibilities involved in the operation of non-public schools; (4) determination of significant principles of law enunciated by the courts regarding corporate rights, responsibilities, and liabilities involved in the operation of non-public schools; (5) determination of the rights and responsibilities of the states in supervision and control of non-public schools; and (6) determination of the extent to which the courts have allowed the states and the federal government to aid non-public schools.

Justification for the Study

Since it was established early in the history of the United States that a dual system of education, including public and private efforts, would be allowed to develop, it was considered important that the legal status of both types of schools be studied. Since 1925 the study of legal aspects of public education was a subject of growing interest to school administrators, lawyers, legislators, and other individuals. The study of the legal aspects of non-public schools, however, was limited.

Literature concerned with the legal aspects of education expanded greatly since 1925. Most of it was concerned primarily with problems related to public school systems. A purpose of the current study was to begin development of a body of literature which would be of value to those concerned with the operation of non-public schools and to those who wish to understand the place of the non-public school in the legal framework of American life. The standard works in the field of school law contained little related to non-public education. Absence of literature directly pertaining to the legal status of the non-public school was considered evidence of the need for this study.

The significance of the study to education in the United States was also justified on the basis of the numbers of pupils involved in the non-public school. In the most recent comprehensive study of the law and the non-public school the growing enrollments of such schools were used as an example of the increasing importance of the non-public school as part of "the nation's total educational resources".[4] Beach and Will, in 1958, stated that

> If this trend should continue, Office of Education estimates released in February 1957 indicate that by 1965 the non-public elementary and secondary enrollment will be 6,840,000. Thus non-public schools would then serve approximately 14.60 per cent of the total elementary and secondary enrollment, an enrollment ratio of 1:6 for all children in elementary and secondary schools in the continental United States.[5]

The non-public school constituted an important factor in the educational program of the United States from earliest time. It was stated that "...the first schools established in the American colonies were semi-private institutions legally encouraged by local or State governments...."[6] In 1963 it was estimated that non-public secondary schools enrolled about one-eighth of all students in the four grades of high school in the United States.[7] Involved were 3,782 schools and a student enrollment of almost 1,100,000.[8] An authoritative, current, comprehensive enrollment study and projection, however, was not available.

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[4] Fred F. Beach and Robert F. Will, The State and Non-Public Schools (Washington, D.C.: U.S. Department of Health, Education, and Welfare, 1958), p. 1.

[5] Ibid.

[6] Diane B. Gertler, Statistics of Non-Public Secondary Schools, 1960-61 (Washington, D.C.: U.S. Department of Health, Education, and Welfare, 1963), p. 1.

[7] __________, Preliminary Report on Offerings and Enrollments in Grades 9-12 of Nonpublic Secondary Schools, 1961-62 (Washington, D.C.: U.S. Department of Health, Education, and Welfare, 1963), p. 4.

[8] Ibid., p. 17.

Gertler justified the interest of the United States Office of Education in compilation of information about non-public schools with these words:

> Interest in nonpublic schools has been heightened by a number of factors, among them rising school taxes, school integration, a revival of general interest in religious matters, rising family income, and increasing competition among students. Moreover the interest is widespread: The general public wants to know about different systems of schooling, legislators about the size of nonpublic schools and their general significance in the general field of secondary education, and nonpublic school officials and patrons about how their schools fit into the scheme of American education.[9]

Non-public education was an important facet of education in America, and non-public schools continued to be an important portion of American education. In this study an attempt was made to place the study of the law and non-public education on an articulated basis. Although non-public schools have been on the scene for many years, they were still considered controversial by many.[10] One purpose of this study was to aid development of understanding among educators concerned with both public and non-public schools.

Method of Procedure

The fundamental method used in the current study was the historical method. Three major processes were involved in this legal research. According to Lentz the processes in legal research are: (1) collection and organization of data; (2) analysis of data collected; and,

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[9] Diane B. Gertler, "Statistics of Nonpublic Schools," School Life, 46:31-36, October. 1963, p. 31.

[10] "Private Schools: Ancient and Controversial," Teacher's College Record, 62:431-454, March, 1961.

(3) presentation of the facts in a readable form.[11]

The basic research procedures which were used throughout the proposed study were based on accepted research procedures in school law.[12] The procedures included general background study of non-legal literature, legal reference books, writings in the field of school law, and writings in the field of education. More specific study of official reports of court decisions, statutes, session laws, and constitutions followed.

The principal source of data for the study was documents. Data were collected primarily from statutes, constitutions, and court reports of the states. Data were organized in readable form around selected topics suggested by the non-legal literature.

The method of procedure specifically involved the following steps: (1) orientation of the researcher to the topic through a review of the background literature in legal books of reference, general texts, and other writing; (2) study and analysis of the constitutional aspects of the problem by recording all references to non-public education, explicit and implicit, in the several constitutions in a flexible note system that allowed for a systematic analysis; (3) collection of data regarding statutory aspects of the problem in the same manner as constitutional aspects; (4) location of cases mentioned in the general reading in the orientation stage of the procedure in the appropriate unit of the National Reporter System,[13] which were thoroughly briefed, and citations to other cases which would have possible significance for the problem recorded; (5) briefing of the pilot cases including recording key numbers and topics of the law (a type of indexing) which enabled the researcher to utilize the American Digest System[14] where all the additional citations to cases in point were located and data gathered from the additional cases; (6) location of judicial meanings of words in Words and Phrases[15] and a standard legal dictionary;[16] (7) Shepardizing of cases used in the final report of the research;[17] (8) analysis of the cases briefed including organization into readable sections according to the questions raised by the sub-problems of the study, using only the most representative cases to substantiate a point of law if it seemed very well settled; and, (9) in the summary section of the report significant principles of law, conclusions, and recommendations discovered through the research were stated.

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[11] John W. Lentz, "Basic Legal Control of School District Organization in Colorado" (unpublished doctoral dissertation, University of Denver, Denver, 1961), p. 21.

[12] John O. Rames, "Suggestions for Research Procedures in School Law" (unpublished paper, College of Law, University of Wyoming, Laramie) n.d.; and, Arthur A. Rezney and Madaline Remmelein, A Schoolman in the Law Library (Danville, Illinois; Interstate Printers and Publisher Inc., 1962.

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[13] National Reporter System (St. Paul: West Publishing Co., continuous to date).

[14] American Digest System (St. Paul: West Publishing Co., continuous to date).

[15] Words and Phrases (St. Paul: West Publishing Co., cumulative to date).

[16] Black's Law Dictionary. Fourth Edition (St. Paul: West Publishing Co., 1951.

[17] Shepard's Citators (Colorado Springs, Colorado: The Frank Shepard Co., to date).

Definition of Important Terms

There were several terms denoting types of schools reported in court decisions used in this study. It was recognized that although particular non-public schools might be very distinctive, for purposes of clarity and relative uniformity the following definitions were given to promote broader understanding of what the generic term "non-public" school contained. The general definitions given below were adopted or adapted from court records, a legal dictionary, or other sources.

School. The Supreme Court of Michigan defined "school" very broadly when it said in the case of Boy's Clubs of Detroit v. Pakula[18] that "school" means little more than an institution with educational purposes and activities. The ordinary meaning of school was defined as "any place where instruction is imparted to the young."[19] Another court was more specific in the definition of "school" and stipulated three elements necessary to make an institution a school. They were the institution or place, the teacher, and the pupils or scholars. These three constituted the generic term which has commonly become considered "school".[20]

Public School. "Public school" was considered as representative of those schools which the state through various boards and officers controlled, directed, and supported.[21]

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[18] 342 Mich. 150, 69 N.W. 2d 348 (1955).

[19] State v. Peterman, 32 Ind. App. 665, 70 N.E. 550 (1904).

[20] Smith v. Donahue, 202 App. Div. 656, 195 N.Y.S. 715 (1922).

Common School. "Common school" was considered to be very similar to the concept of the public school. A Missouri court stated that the term "common schools" means public or free schools maintained by the state at public expense, as distinguished from any private school. A "common school" was interpreted as meaning an elementary or secondary school of the commonwealth supported in whole or in part by public taxation.[22] The word "common" contained no reference to the kind of studies to be taught in such a school.[23]

Private School. The court in Flagg v. Murdock defined "private school" when it said that "a private school is one supported and managed by individuals as distinguished from a 'public' or 'common' school."[24] The Supreme Court of Washington emphasized similarities between the two systems in stating that "the purpose and end of both public and private schools is the same." In further comment the court said that a private school possessed the same characteristics as the public school, if it was a regular, organized and existing institution, and made a business of instructing the children of school age in the required studies for the full time required by the laws of the state.[25]

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[21] Silver Lake Consolidated School District v. Parker, 238 Iowa 984, 29 N.W. 2d 214 (1947).

[22] Sherrard v. Jefferson County Board of Education, 294 Ky. 469, 171 S.W. 2d 963 (1942).

[23] Roach v. Board of Directors, 7 Mo. App. 567 (1879).

[24] 172 Misc. 1048, 15 N.Y.S. 2d 635 (1939).

Denominational School. A "denominational school" was considered a private school operated and controlled by a particular denomination or corporation organized by a particular denominational group.[26]

Parochial School. A "parochial school" was defined as a private school operated by a particular parish or local church organization.[27]

Academy. Usually the term "academy" contained a somewhat finer distinction than "school". It was defined as a place of instruction or training, and specifically as a school intermediate between the common school and college, quite often connected with a specialty, such as theology.[28]

Non-public School. "Non-public" school was considered a very broad term by some as indicated in this quotation:

> Nonpublic schools are schools supported by means other than public taxation or public grants. They include parochial schools; privately operated nonsectarian schools (profit-making or non-profit); privately operated schools for the deaf, blind, mentally retarded, or students with other types of physical or mental exceptionality, for whom education equivalent to that of the public elementary or secondary schools is provided; private college preparatory schools or military academies; secondary

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[25] State v. Counort, 69 Wash. 361, 124 P. 910, 41 L.R.A. (N.S.) 95 (1912).

[26] Henry Campbell Black, Black's Law Dictionary (St. Paul: West Publishing Company, 1951), p. 522.

[27] Ibid., p. 1272.

[28] Sisters of Mercy v. Town of Hoosett, 93 N.H. 301, 42 A. 2d 222 (1945).

> level "finishing" schools; laboratory schools of private colleges and universities; and evening schools offering the equivalent of a high school education....schools which offer training in specific skills rather than an academic curriculum, such as reading clinics and business or vocational schools.[29]

A "non-public school" was considered for purposes of this study to be a school which was under the immediate operational control of a private individual or organization, as opposed to a governmental agency or agent. It existed apart from the public school system of a state. The "non-public" school was usually supported by private funds as distinguished from public funds raised by taxation.[30]

Delimitation of the Study

The study was limited to law of record on January 1, 1964.

The primary sources of data were the official statutes, constitutions, and court records of the states and the federal governments. Secondary sources of information were used only for background or possible interpretations.

Only schools similar and/or comparable to the elementary and secondary schools of the public school system which would meet compulsory attendance requirements were included in the study. The type of school of limited curriculum and duration described by the court in People v. Am. Socialist Society,[31] in which politically subversive doctrines were taught, was not included, except in cases where the opinion of the court was made generally applicable to non-public schools. The purely unique aspects of court records were not considered of prime importance for the study, but rather the generalizations made by the courts, generally applicable to non-public schools.[32]

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[29] Nonpublic Secondary Schools: Directory 1960-61 (Washington, D.C.: U.S. Department of Health, Education, and Welfare, 1963), p. 1.

[30] (adapted) Beach and Will, Loc. cit.

[31] 202 App. Div. 640, 195 N.Y.S. 801 (1922).

Organization of the Study

The final report of the study was composed of nine chapters.

Chapter I contained a presentation of the nature and scope of the study. It included justification for the study, method of procedure, and definition and delimitation of the study.

Chapter II consisted of a review of studies of related problems and a discussion of related background literature.

Chapter III contained a report of the constitutional provisions in the fifty states related to non-public schools.

Chapter IV consisted of a report of all statutory provisions in the fifty states related to non-public schools.

Chapter V consisted of a discussion of court decisions related to parental rights, responsibilities, and liabilities in the organization and operation of non-public schools. A similar treatment was presented in Chapter VI, but with emphasis on the corporate organization rather than the parent.

Chapter VII contained a discussion of principles enunciated by the courts regarding the rights of the states to supervise and control non-public schools.

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[32] Lentz, loc. cit.

Chapter VIII consisted of a survey of the cases in which the question of the extent to which the state and federal governments could aid non-public schools was treated.

Chapter IX contained a summary and the conclusions reached by the researcher.

CHAPTER II

SELECTED STUDIES OF RELATED PROBLEMS AND REVIEW OF SELECTED BACKGROUND LITERATURE

The purpose of this chapter was to survey selected literature related to the problem under study and to review selected literature used for background purposes. Included were doctoral dissertations undertaken at several universities, research monographs, publications of the federal government, legal articles, books, and periodicals.

I. SELECTED STUDIES OF RELATED PROBLEMS

The research and writings reviewed in this section were related to the study of the legal status of non-public schools. A review of selected doctoral dissertations and publications and research monographs of the federal government and learned societies was included.

Doctoral Dissertations

It was observed by Nolte and Linn in 1963[1] that there was increased activity in writing on legal aspects of education, and that the literature of legal aspects of education demonstrated growth each year since 1950. Much of this literature was concerned with public schools only, with a particular area of the country, such as a single state, or a study of a special aspect of education.

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[1] M. Chester Nolte and John Phillip Linn, School Law for Teachers (Danville, Ill.: Interstate Printers and Publishers, 1963), p. 329.

The growing body of literature included doctoral dissertations at universities throughout the country. The dissertations reviewed in this section were representative of dissertations concerned with legal aspects of education.

Bakken,[2] at the University of Denver, surveyed student personnel services in colleges and universities and studied court cases from which generalizations about the legal basis for student personnel services were made. The studies of Olson,[3] Lentz,[4] and Jones,[5] also at the University of Denver, were also concerned with special aspects of public school operation and were typical of studies limited to a particular state. Olson, in 1951, utilized questions of legal issues submitted by school personnel and attempted to determine what Colorado courts said about the particular issue. Lentz studied the implications and legal problems connected with school district reorganization in the state of Colorado. Jones investigated law concerned with pupil and school relationships as it existed in the Colorado public schools.

There were several studies of particular issues of a legal nature typified by Burke's study of litigation related to corporal punishment in public schools in selected states.[6]

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[2] Clarence J. Bakken, "An Analysis of the Legal Basis for Operating Selected Student Personnel Services in State Tax-Supported Four-Year Colleges and Universities in the United States" (unpublished doctoral dissertation, University of Denver, 1959).

[3] Arthur Olson, "The Legal Status of the Teacher in Colorado" (unpublished doctoral dissertation, University of Denver, 1951).

[4] John W. Lentz, op. cit.

[5] Rolland W. Jones, "The Legal Rights and Legal Liabilities Involved in Pupil-School Relationships in the Colorado Public Schools" (unpublished doctoral dissertation, University of Denver, 1961).

In 1957 a significant study for non-public schools by Will[7] at the University of Maryland was reported. Will investigated constitutions and statutes of the 48 states and recorded all references to non-public schools. Special emphasis in Will's study was given to the relationship of state departments of education and non-public schools within each state. Will's study was later published by the United States Office of Education.[8]

Will, in developing the study, discussed the functional role of non-public schools and emphasized that non-public schools provide services of an educational nature to persons who for various reasons prefer them to the local public schools. Non-public schools were usually selected on religious grounds or on secular grounds, according to Will, as religious organizations often operated schools for the benefit of members. Secular grounds included grounds other than religious conviction, such as environmental factors, administrative factors, personal factors, or family considerations. Will also stated that non-public schools may be utilized to provide services that public institutions do not provide or are unprepared to provide for persons who desire or are compelled to obtain special services.[9] Will's study was limited to law of record at the end of 1956 and included no discussion of court decisions.

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[6] Dennis P. Burke, "A Study of the Court Cases Resulting from Corporal Punishment in Public Schools" (unpublished doctoral dissertation, University of Pittsburgh, 1958).

[7] Robert F. Will, "An Analysis of the Legal Responsibilities of State Departments of Education for Non-public Schools" (unpublished doctoral dissertation, University of Maryland, 1957).

[8] Fred F. Beach and Robert F. Will, The State and Non-Public Schools (Washington, D.C.: U.S. Department of Health, Education, and Welfare, 1958).

Several studies were discovered which were delimited to include only consideration of cases at a certain level of court, such as Mitchell's[10] study of United States Supreme Court decisions. Mitchell investigated eleven Supreme Court cases which involved religion and education. The cases used included the period from 1844 to 1948 when the famous McCollum case which prohibited released time for religious instruction on the school property was decided. The cases were used to discuss church and state relationships. Mitchell concluded that the most serious conflict in American church-state relationships was the concerted effort of church groups to secure aid for their religious educational activities.

The growing dispute in American life concerned with financial aid to sectarian schools produced a variety of literature. Thompson[11] studied financial aid to sectarian schools utilizing a wide variety of sources particularly concerned with the Catholic position. The study by Caldwell[12] was limited to the Catholic position. Caldwell's study was characterized by heavy reliance upon secondary sources which may be, in this case, according to testimony of the author, highly charged with emotions. An analysis of Catholic arguments for financial aid was developed in the study and summarized into succinct statements,[13] which included the reliance on the Church's authority in education, fairness involved in proposed tax distribution, savings of public funds resulting from parochial schools, double taxation, public purpose of parochial schools, examples of support of parochial education in foreign countries, distribution of taxes based on educational needs of children, superiority of religious education, and the intent of framers of the U.S. Constitution. A unique feature of Caldwell's study was a partial list of the number of organizations formed to oppose the proposals of those desiring aid for sectarian schools,[14] including Protestants and Other Americans United for Separation of Church and State (POAU), The Institute of Church and State, The Guardians of Religious Freedom, The League for Separation of Church and State, The Interfaith Movement Incorporated, and the League Opposed to Sectarian Appropriations.

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[9] Will, op. cit., pp. 8-13.

[10] Fredric Mitchell, "The Supreme Court of the United States on Religion and Education" (unpublished doctoral dissertation, Columbia University, 1959).

[11] John C. Thompson, "Legal Aspects of Federal Aid to Sectarian Schools" (unpublished doctoral dissertation, George Peabody College for Teachers, 1955).

[12] Cleon C. Caldwell, "The Development of Concepts Regarding the Use of Tax Funds for Public and Parochial Schools" (unpublished doctoral dissertation, University of Minnesota, 1956).

Compulsory attendance laws and non-public schools were studied in 1961 by Billings.[15] He reviewed a much publicized situation in the Ohio controversy concerned with the educational and religious convictions of the Old Order Amish. He studied specifically the facts leading up to the

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[13] _Ibid_., pp. 633-634.

[14] _Ibid_., p. 795.

[15] Thomas A. Billings, "The Old Order Amish Versus the Compulsory School Attendance Laws: An Analysis of the Conflict" (unpublished doctoral dissertation, University of Oregon, 1961).

Hershberger case, the positions of the Amish and the public school officials, and dealt at length with the aftermath of public opinion. During 1961 the Ohio legislature decided to study the complex problem of compulsory attendance and the Amish group.

A variety of other topics were studied in various universities. Interpersonal relationships, with particular emphasis on contracts, torts and tuition agreements were investigated in a study by Graves.[16] Graves concluded that there was a body of law peculiar to private schools.[17] Hamilton[18] conducted a study of proprietary schools of less than collegiate rank and of a post-secondary level. The purpose of Hamilton's study was to determine the nature and extent of provisions made by states for the regulation of such private schools. A study by Melleky was limited to parochial schools and cases after 1925.[19] Melleky limited his investigation to schools in which religious creeds were taught and which were under direct control of a religious organization. Melleky concluded that states controlled parochial schools usually within limits defined by the courts.

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[16] Howard C. Graves, "A Study of Litigation Involving the Interpersonal Relationships of the Professional Personnel, Patrons, and Students of Private Schools" (unpublished doctoral dissertation, Oklahoma State University, 1961).

[17] Ibid., p. 87.

[18] William Hamilton, "The Regulation of Proprietary Schools in the U.S." (unpublished doctoral dissertation, University of Pennsylvania, 1958).

[19] John C. Melleky, "The Status of Parochial Elementary and Secondary Schools as Reflected by Selected Judicial Decisions Since 1925" (unpublished doctoral dissertation, University of Pittsburgh, 1963).

There also were studies devoted to consideration of Protestant Christian schools, as differentiated from the heavy emphasis on Catholic education, in many dissertations studied. Although these dissertations did not deal with legal topics they did provide insight into another type of educational endeavor which was included in the comprehensive term "non-public schools". Fremont[20] studied administration in selected Christian schools, but limited the study to schools associated with the National Association of Christian Schools, an affiliate of the National Association of Evangelicals. Specifically excluded were the schools affiliated with the National Union of Christian Schools, the Lutheran groups, or Seventh Day Adventists, which eliminated consideration of a large segment of Protestant Christian education. Loth's study[21] was limited to schools in one metropolitan area, and investigated curriculum, objectives, and organization of the schools. De Jong's study[22] of a historical and theological nature provided valuable background to the movement of Protestant Christian schools, although it was limited to schools related to the Christian Reformed Church. Special emphasis was given to the theory of parent—contolled schools which were schools operated by parents' associations and not parishes or churches.

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[20] Walter G. Fremont, "Administrative Competencies in Christian Day Schools" (unpublished doctoral dissertation, Pennsylvania State University, 1961).

[21] Paul E. Loth, "A Study of Certain Christian Elementary Day Schools Situated in Metropolitan Philadelphia" (unpublished dissertation, Temple University, 1960).

[22] Jerome B. De Jong, "The Parent-Controlled Christian School" (unpublished doctoral dissertation, New York University, 1954).

Publications of the Federal Government

The statutes, constitutions, and court decisions which made up the main portion of data for the study are publications of the state governments. There were, however, special publications issued by the Superintendent of Documents reporting research which was considered of import and interest to this study. The publications reviewed in this section were concerned particularly with statistics of non-public schools. In the early 1960's the United States Office of Education engaged an educational specialist for non-public elementary and secondary schools in the Studies and Surveys Branch of the Division of Educational Statistics.[23]

The interest of the government in legal problems of education was indicated in a monograph published in 1961.[24] The Assistant Specialist in School Law of the U.S. Office of Education compiled the provisions in the state constitutions of the fifty states which pertain to church-state relations.[25]

In 1955 the U.S. Office of Education and the Study Commission of the Council of Chief State School Officers published a study which presented a nation-wide survey of the control and structure of education at the state level, the role of State Boards of Education and Chief State School Officers, and the general state programs of education.[26] Included were the basic data on the state-level structure and organization compiled from official state sources.[27]

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[23] Diane B. Gertler, "Statistics of Non-Public Schools," School Life, 46:31-36, October, 1963, p. 31.

[24] U.S. Department of Health, Education, and Welfare, Research and Reporting Activities in Legal Problems of Education (Washington, D.C.: Office of Education, March, 1961).

[25] August W. Steinhilber, State Constitutional Provisions on Church-State Relations (Washington, D.C.: U.S. Office of Education, n.d.) Mimeographed.

Beach and Will published, in 1958, a study of the state and non-public schools, including regulation by constitutional provisions, statutory provisions, and state departments of education.[28] Enrollment figures available in 1957 were reported in the study. In the basic data included in the report all constitutional and statutory provisions for non-public schools were reprinted.

Umbeck[29] summarized state legislative action on compulsory school attendance before January 1, 1960. All states were reported as recognizing the right of parents to choose non-public schools for their children.

Statistics gathered on non-public educational efforts were reported by Gertler in 1963.[30] Included were matters of a historical nature, the types of schools operated, enrollments, curricular offerings, and teaching staffs. The report was limited to data of 1960-61 and included only secondary education. Information related to non-public schools was collected regularly by the U.S. Office of Education from 1890 to 1930, and spasmodically from 1930 to 1947. Comprehensive information was not collected after the 1947-48 school term.[31] Information concerning nonpublic secondary schools during 1961-62 was accumulated and reported by Gertler in 1963 also.[32] The latter study included information about course offerings and specific subjects taught in the schools. Gertler also reported data concerning accreditation status, enrollment, teaching staff, and other information regarding 4,128 nonpublic secondary schools in 1961.[33] Information similar to the 1961 study on non-public schools was last gathered and published by the U.S. Office of Education in 1952.[34]

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[26] Fred F. Beach and Robert F. Will, The State and Education (Washington, D.C.: U.S. Department of Health, Education, and Welfare, 1955).

[27] Ibid., pp. 43-174.

[28] __________, The State and NonPublic Schools (Washington, D.C.: U.S. Department of Health, Education, and Welfare, 1958).

[29] Nelda Umbeck, State Legislation on School Attendance and Related Matters, (Washington, D.C.: U.S. Department of Health, Education, and Welfare, 1960).

[30] Diane B. Gertler, Statistics of Nonpublic Secondary Schools, 1960-61 (Washington, D.C.: U.S. Department of Health, Education and Welfare, 1963).

Publications of Learned Societies

Many learned societies and organizations were interested in various legal aspects of education and published monographs, conference reports, books, and articles concerned with special topics.

The National Education Association (NEA) Research Division published many monographs concerned with legal problems of education. A 1946 Research Bulletin of the NEA dealt with the state and non-public schools of the sectarian variety in an article "The State and Sectarian Education."[35] Another monograph entitled The Teacher and the Law[36] in the School Law Series of Research Monographs of the NEA was limited to consideration of litigation in the courts concerned with the public school teacher, as were the Research Monographs published annually in the Series under the title The Teacher's Day in Court.[37] The Pupil's Day in Court,[38] an annual publication in the NEA's School Law Series, was also limited to reporting of cases of direct concern to public school pupils or students in publicly financed institutions of higher education.

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[31] *Ibid.*, p. 12.

[32] Diane B. Gertler, *Preliminary Report on Offerings and Enrollments in Grades 9-12 in Nonpublic Secondary Schools, 1961-62*. (Washington, D.C.: U.S. Department of Health, Education, and Welfare, 1963).

[33] ________, and Leah W. Ramsey, *Nonpublic Secondary Schools: A Directory, 1960-61* (Washington, D.C.: U.S. Department of Health, Education, and Welfare, 1961).

[34] *Ibid.*, p. 1.

Each year since 1936 the NEA Research Division surveyed, by questionnaire, state departments of education to determine legislative enactments related to education during a preceding year and published the results in a publication entitled High Spots in State School Legislation.[39] Primary attention was given to public educational matters, but consideration of non-public education was implicit in a total state consideration.

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[35] National Education Association, Research Division, "The State and Sectarian Education," Research Bulletin, 24:3-43, February, 1946.

[36] __________, The Teacher and the Law, (Washington, D.C.: National Education Association, September, 1959).

[37] __________, The Teacher's Day in Court: Review of 1962 (Washington, D.C.: National Education Association, 1959), Published as an annual review.

[38] __________, The Pupil's Day in Court: Review of 1962 (Washington, D.C.: National Education Association, 1958), Published as an annual review.

[39] __________, High Spots in State School Legislation Enacted January 1-August 1, 1961 (Washington, D.C.: National Education Association 1958. Published as an annual review.

A group which was organized to promote interest in problems of legal aspects of education was the National Organization on Legal Probelms of Education (NOLPE). The organization began publication of a series of books under the subtitle "Legal Problems of Education Series." The first of these, Law and the School Superintendent,[40] discussed attendance at private schools and reviewed home tutoring as a substitute for attendance at a regular public school. The second in the series[41] dealt with the general field of school law and contained recommendations for improvement of school law. The third in the series discussed briefly the control of attendance at non-public schools and pointed out the parent's right in choosing a school for an "appropriate education" for his particular child.[42] It was also emphasized that the concept of in loco parentis was not the same at a private school as it was in a public school,[43] because the parent has more right to make a choice in non-public schools. In the public school the state as an entity acted more directly in the place of the parent.

The liability of Indiana public schools was investigated by the

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[40] Robert L. Drury, (ed.), Law and the School Superintendent (Cinncinnati: W.H. Anderson Company, 1958), pp. 215-219.

[41] Madaline K. Remmlein and Martha L. Ware, An Evaluation of Existing Forms of School Laws (Cinncincinnati: W.H. Anderson Company, 1959).

[42] Reynolds C. Seitz, (ed.), Law and the School Principal (Cinncinnati: W.H. Anderson Co., 1961), pp. 19-22.

[43] Ibid., pp. 138-139.

Indiana School Boards Association in 1959.[44] The study was similar to several financed and conducted by professional organizations about a particular problem. Conferences, such as those reported by Appalachian State Teachers' College,[45] were submitting reports of discussions and symposia on school law topics to add to the literature of legal aspects of education. At the Appalachian State Conference the school segregation casses were discussed by Allen Markham, issues of church and state in the public schools were discussed by Newton Edwards, legality of school-board regulations on high school marriages were discussed by E. C. Bolmier, and tort liability in public schools was discussed by David Martin. Church-state problems and related problems in non-public schools were also discussed and reported by national organizations. For example, the 1963 program of the National School Boards Association, included a discussion of sharing students, students attending public schools for "neutral" subjects and attending parochial schools for "religious" subjects, and a general review of school law as it is concerned with church and state.[46] Lawyers, churchmen, school administrators, and citizens were concerned with the proper place of religion in education. Religion in the public schools was an important current problem.

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[44] Robert W. Schoerer, The Liability Status of Indiana Public Schools (Bloomington, Ind.: Indiana School Boards Association, 1959).

[45] "Current Trends in School Law," Proceedings of the Second School Law Conference (Boone, North Carolina: Appalachian State Teachers College, 1963).

[46] Lorin A. Burt, "What About Shared Time?," and John Phillip Linn, "School Law: Separation of Church and State," School Boards in a Changing Society, 1963 Convention Proceedings (Evanston, Ill.: National School Boards Association, 1963), pp. 42-66.

II. REVIEW OF SELECTED BACKGROUND LITERATURE

The background literature reviewed in this section represented a sample of the type of literature which was helpful in development of the statement of the problem in the study. The background literature was most helpful in determining appropriate subordinate problems. It was also useful to help determine readable topics around which the major portions of the study were arranged. Included in this section were general legal writings, selected books, and periodical articles.

Legal Literature

Three standard legal books were utilized to obtain a general overview of the field which the study covered. Each of these sources provided a great number of references to cases used in the study.

A volume of American Jurisprudence, a standard legal encyclopedia, was used for review purposes.[47] It contained a general overview of the field of school law. The most valuable section for this study of American Jurisprudence was the section on private schools.[48] It consisted of a section on private schools generally, legislative regulation, use of public buildings, tuition fees, illness and attendance, pupil withdrawal, dismissal from school, suspension, corporal punishment, remedies and procedures, and tort liability.

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[47] American Jurisprudence, Vol. 27 (San Francisco: Bancroft-Whitney Co., and New York: The Lawyers Cooperative Publishing Co., 1943), cumulative supplements to date.

[48] 47 Am. Jr., Schools, Sec. 220-229.

Schools and school districts in general were discussed in two volumes of Corpus Juris Secundem.[49] This encyclopedia claimed to review all of the law on a topic. Corpus Juris Secundem contained discussion of topics pertinent to the study in two sections entitled, "Definitions and Classification of Schools"[50] and "Private Schools."[51] The section on private schools discussed incorporation and organization, governing boards, public aid, visitation and supervision, contracts, and discipline of pupils.

The American Digest System[52] indexed all cases reported directly related to private schools under the topic "Schools and School Districts". In the section concerned with private schools and academies, cases dealing with establishment and status, incorporation and organization, public aid regulation and supervision, property and liabilities, governing boards and officers, teachers, and pupils and discipline were indexed.

Books

There were few books which dealt exclusively with matters related to non-public schools but non-public schools were mentioned in several. Increasing interest in non-public schools increased the writing in the field.

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[49] Corpus Juris Secundem, Vols. 78 and 79 (Brooklyn: The American Law Book Co., and West Publishing Co., 1952), Cumulative supplements to date.

[50] 78 C.J.S. Schools and School Districts, Sec. 1-2.

[51] Ibid., Sec. 3-11.

[52] American Digest System (St. Paul: West Publishing Company, continuous to date).

For example, a distinctive feature of Stiles' 1962 book on secondary education in the United States was the inclusion of a chapter on non-public secondary schools.[53] Stiles discussed growth in non-public schools, strengths and weaknesses, historical background, and special purposes of non-public schools. A book by Sargent concerned with private schools[54] consisted of a series of promotional articles for independent schools, which were paid for by the schools. Since 1919 Porter Sargent has published an annual survey of independent education. Each Sargent handbook contained much descriptive information about non-public schools,[55] including staff, costs, and programs.

Other books, although not written as legal studies, were found to be important as background reading for the study of non-public schools in American life. Church-state issues, which often formed a background for non-public educational issues, were treated by Drinan,[56] who discussed issues concerned with public policy and non-public schools. Of special interest were chapters on the history of Church-state cooperation, the church related school, benefits to pupils in private schools, and federal aid to education.[57] The matter of aid to non-public school patrons from governments was developed by Blum[58] with discussion of a comprehensive "tax credit" plan.

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[53] Lindley J. Stiles, et. al., Secondary Education in the United States (New York: Harcourt, Brace, and World, Inc., 1962), pp. 462-490.

[54] Private Schools Illustrated (Boston: Porter Sargent, 1963).

[55] The Handbook of Private Schools, Forty-fifth Edition (Boston: Porter Sargent, 1964).

[56] Robert F. Drinan, Religion, the Courts, and Public Policy (New York: McGraw-Hill Book Company, Inc., 1963).

[57] Ibid., Chapters 1, 2, 4, 5, and 6.

Background information to the implications of new problem in American education, the opening of private schools to avoid public school integration was presented by Muse.[59] Segregation issues, tuition grants, and tax credits were to be argued before the United States Supreme Court in 1964, in the Prince Edward County case, Griffin, et. al., Petitioner v. County School Board of Prince Edward County, Respondents.[60]

Other studies and works included more material of a distinctly legal nature. Gauerke made the following statement about non-public schools: "Agitation has increased since teachers in private schools have begun to enjoy the benefits from membership both in a retirement system and the Social Security Plan."[61] The statement was unsupported and there were no cases cited. Hamilton was cited as authority by Gauerke to support the statement that this area was one of the most productive sources of school litigation.[62] Powell[63] discussed in a comprehensive work public bus service for pupils attending private, nonprofit schools, as it was raised, debated, argued, agitated, and somewhat resolved in one state. Arguments on both sides were presented, and techniques reviewed which were used by both sides. The climactic passage of the referendum and its aftermath were reviewed.

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[58] Virgil C. Blum, Freedom of Choice in Education (New York: Macmillan Co., 1958).

[59] Benjamin Muse, Virginia's Massive Resistance (Bloomington: Indiana University Press, 1961).

[60] Brief of Citizens for Educational Freedom, Amicus Curiae, No. 592, October Term, 1963, Supreme Court of the United States.

[61] Warren E. Gauerke, Legal and Ethical Responsibilities of School Personnel (Englewood Cliffs: Prentice-Hall, Inc., 1959), p. 95.

[62] Ibid., p. 94.

[63] Theodore Powell, The School Bus Law (Middletown, Connecticut: Wesleyan University Press, 1960).

Significant Supreme Court cases concerned with education were investigated in Spurlock's book.[64] Thirty-nine cases were reviewed in detail, and nine others considered briefly. Four cases were particularly identified as having special import for non-public schools:[65] the Dartmouth case which protected a private college's charter from encroachment by the state; the Vidal case which protected a donor's contribution even though it was antagonistic to the religious tenor of the time; the Berea College case which imposed segregation on a private institution; and the International Textbook case which ruled that the state cannot regulate correspondence schools outside of its borders. Several other cases were reviewed by Spurlock which did have import for non-public schools. A valuable portion of Spurlock's work for research purposes was the section on how the U.S. Supreme Court operates.[66]

Of a general type of literature in the field of school law were The Yearbooks of School Law which were published annually. They were generally designed to review decisions of higher courts made during a given year, and each volume contained two articles of a special topic and a bibliography of recent publications and research studies in the field. The series was begun in 1933 by Chambers;[67] was published by Garber from 1950-1956;[68] and was continued by Garber as editor from 1957 to 1963.[69] In 1953 M.R. Sumption began in the yearbooks a section of value for review purposes entitled "Annotated Bibliography of Recent Studies in School Law."

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[64] Clark Spurlock, Education and the Supreme Court (Urbana: University of Illinois Press, 1955).

[65] Ibid., pp. 234-235.

[66] Ibid., pp. 248-252.

The 1963 Yearbook of School Law was typical of the format developed in these books over the years. Included were chapters on the State and Public Schools, School Districts and School Officers, School District Reorganizations, Liability, School Property, Finance, Teachers and other employees, Pupils, and a discussion of eight particularly significant cases decided in 1963. Two special articles, one on collective bargaining, and one on delegation of authority in purchasing, were included in the 1963 Yearbook. Sumption's annual annotated bibliography of recent studies in School Law in 1963 included sixteen items.

Garber discussed the authorization of the transportation of parochial school students generally following Everson and Judd[70] in another book. A short work by Hamilton referred to the parental rights in education when he stated that "...the states and the people (emphasis supplied, ed.) are left to work out the administer their educational destinies as they see fit."[71]

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[67] M.M. Chambers, Yearbooks of School Law (Washington, D.C.: American Council on Education, 1933-1942).

[68] Lee O. Garber, (ed.), The Yearbooks of School Law (Philadelphia: School of Education, University of Pennsylvania, 1950-1956).

[69] __________, The Yearbooks of School Law (Danville, Ill.: Interstate Printers and Publishers, 1957-1963).

[70] __________, Law and the School Business Manager (Danville, Ill.: Interstate Printers and Publishers, 1957), pp. 179-180.

Several textbooks were used widely in the field of school law during the second quarter of the 20th century. Trusler's 1927 book included a comprehensive treatment to that date on the status and regulation of private schools,[72] in which admission and discipline of pupils, contracts for instruction, tuition matters, regulation of private schools contrasted to public schools, public support, segregation, and the Dartmouth case were discussed. A simplified treatment of sectarian education was given by Marke in 1949.[73]

There were several books and articles written by Madaline Kinter Remmlein. Remmlein's treatment of non-public schools in one book was limited to a statement about the parental right to choose a school, and a reprint of the Pierce case. Remmlein emphasized that Pierce was not only a religious case, as it is often considered, because private schools also joined in the suit. An appendix devoted to the matter of public aid which included a brief of Everson and Cochran[74] was included. The same type of material was discussed in a chapter on public school boards' relationships with private schools in a 1953 book by Remmlein.[75] In the latest edition of her book, School Law, Remmlein added a related section on curriculum in non-public schools based chiefly on the Meyer case.[76]

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[71] Robert R. Hamilton, Legal Rights and Liabilities of Teachers (Laramie, Wyoming: School Law Publications, 1956, p.2)

[72] Harry Trusler, Essentials of School Law (Milwaukee: Bruce Publishing Co., 1927), pp. 239-271.

[73] David Marke, Educational Law Simplified (New York: Oceana Publications, 1949), pp. 68-94.

[74] Madaline K. Remmlein, School Law (New York: McGraw-Hill Book Company, Inc.) 1950, pp. 220-226, 319-339.

Since 1933 Newton Edward's comprehensive work on the legal basis of school organization was a standard reference text in school law.[77] Non-public schools were discussed in relation to attendance, curriculum, state control, and use of public property. Hamilton and Mort authored another standard textbook in which non-public schools were discussed in connection with free textbooks, transportation, attendance, control, and a definition of a parochial school.[78] A 1963 contribution in the textbook area of school law was the work by Nolte and Linn.[79] This work was primarily concerned with public school teachers and school law as a field of study.

Periodicals

Numerous articles have been written from several viewpoints regarding non-public schools. The Education Index in the last ten years

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[75] __________, The Law of Local Public School Administration (New York: McGraw-Hill Book Co., Inc., 1953), pp. 213-238.

[76] __________, School Law, Second Edition (Danville, Ill.: Inter-State Printers and Publishers, 1962), pp. 253-255.

[77] Newton Edwards, The Courts and the Public Schools, Revised Edition (Chicago: University of Chicago Press, 1955).

[78] Robert R. Hamilton and Paul R. Mort, The Law and Public Education, Second Edition (New York: The Foundation Press, Inc., 1959, pp. 26-27, 27-29, 33, 507, and 508.

[79] M. Chester Nolte and John P. Linn, School Law for Teachers (Danville, Ill.: Interstate Printers and Publishers, Inc., 1963).

(1954-1963) listed over 200 articles that were in one way or another concerned with non-public schools.

Popular magazines contained many articles about non-public education. Fleming wrote in 1963 a provocative article which was widely read and commented upon concerned with the "potential collapse" of Catholic schools if financial relief for patrons would not be provided soon.[80] Fleming discussed the use of shared-time to alleviate the problems in Catholic schools. In the same month Star also discussed problems of enrollment, staff, and finances in Catholic schools,[81] and presented the alternatives available if the schools were closed. Public support for non-public schools was debated by many, such as Ribicoff[82] and Rooda.[83] Senator Ribicoff presented the possibility of a tuition-tax credit plan. Rooda discussed what he considered discrimination to those who felt it essential that education be carried on in a religious setting. The result of financing private education through tuition grants and tax credits in Virginia to provide education when schools were closed to prevent integration was discussed by editors of a weekly newsmagazine.[84]

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[80] Thomas J. Fleming, "The Crisis in Catholic Schools," Saturday Evening Post, 236:19-25, October 26, 1963.

[81] Jack Star, "Trouble Ahead for Catholic Schools," Look, 21:37-40, October 22, 1963.

[82] Abraham Ribicoff, "Common Ground in the School-Aid Debate," Catholic Digest, 27:68-72, October, 1963.

[83] Stanley Rooda, "Public Support: Are Our Children Second Class Citizens?", The Christian Home and School, 39:17-20, February, 1961.

[84] "When School Bells Ring After 4 Year's Silence, U. S. News and World Report, 55:41-43, September 30, 1963.

The legal issues involved in the concept of separation of church and state were widely discussed in the legal journals. Public school problems with religion were discussed by Rosenfield.[85] Rosenfield raised the question of adding a fourth "R" — Religion — to the public school system. After reviewing the litigation through the years by the Court Rosenfield concluded:

> ...that if the Supreme Court holds true to form, on appropriate occasions it will progressively heighten the wall of separation between church and state and will guarantee a true and consistent pattern between religion and government.[86]

Constitutionality of government aid to non-public schools was also debated widely in the legal periodicals. The debate by Butler[87] and Pfeffer[88] was typical of the kind of argument taking place. Butler and Scanlan said that they were of the opinion that the majority of Americans will in the future recognize the need for and agree to the justice of a program of federal assistance to non-public schools. They concluded that the vocal minority that opposes aid to parochial schools was actually opposed to the ancient faith on which they are based. Pfeffer maintained that private schools must be financed privately if they are to remain truly private. Pfeffer stated that absolute separation of church and state including church schools, and the state was best for the church and best for the state and the preservation of freedom for both.

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[85] Harry N. Rosenfield, "Separation of Church and State in the Public Schools," University of Pittsburgh Law Review, 22:561-589, Number 3, March, 1961.

[86] Ibid., pp. 588-589.

[87] Paul M. Butler, and Alfred R. Scanlan, "Wall of Separation - Judicial Gloss on the First Amentment," Notre Dame Lawyer, 37:288-308, March, 1962.

[88] Leo Pfeffer, "Federal Funds for Parochial Schools? No!", Notre Dame Lawyer, 37:309-322, March, 1962.

A variety of professional journals in the field of education contributed articles on the question of public aid for non-public schools. Most of these articles were presented to stimulate further thought and did not contain the weight of authority which a court decision would or did. Brickman[89] presented both sides of the question, and reviewed the arguments taking place, while McCluskey and Butts[90] debated and took opposing sides. McClusky presented the view that the preservation of the right of family choice in education, religious freedom, and full development of the nation's talent required assistance to those who felt compelled to educate their children in parochial schools. Butts argued, on the other side, that any aid would necessarily require expansion of aid, and would eventually drain from the public treasuries funds desperately needed by public education. Butts' theory was that the public schools' enhancement was essential to the preservation of a free society. The Horace Mann League was reported as filing suit against use of state funds for construction at church-related colleges.[91] Radcliffe[92] examined the history of the NDEA loan program for non-public schools and supported them as being constitutional and wise public policy. Decker[93] reported in 1963 that 207 private non-profit schools used loan funds authorized by the NDEA Act of 1958. A total of 2.7 million dollars was borrowed to benefit initially 92,600 pupils.

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[89] W.W. Brickman, "For and Against Public Aid to Religious Schools," School and Society, 89:247-251, May 20, 1960.

[90] N.J. McCluskey and R. Freeman Butts, "Public Funds for Parochial Schools?," Teacher's College Record, 62:49-62, October, 1960.

[91] America, 109:839, September 28, 1963.

[92] Charles W. Radcliffe, "Loans to Nonprofit Private Schools," Harvard Educational Review, 33:336-359, Summer, 1963.

The role of the independent school in American life was an issue that generated much discussion in the literature. Opinions indicated that the role was not clearly settled by educators. Gummere[94] presented the chief role of the independent school as one of meeting a spiritual and intellectual crisis in American life. The advantages of smallness, keen competition, and necessary cultivation of diversity in American culture were used as justification for the existence of independent schools. Parkman[95] suggested that typical independent schools could be characterized as having a curriculum orientated to the liberal arts tradition because over 90% of the graduates of such schools usually attend colleges with strong liberal arts programs. McManus[96] attempted to answer the question of why Catholics were willing to spend over $2.3 billion each year to educate their children. He stated that the overall aim of Catholic schools was to implant habits, attitudes, and ideals which will enable them to live Christian lives in American democratic society. Ahlschwede[97] discussed schools in the Protestant Church-related tradition, and traced their roots to the Middle ages. Specific denominational loyalty in parochial institutions and organization of independent associations was treated. Kaminetsky[98] discussed Jewish education generally, and differentiated three types of schools which included the one-day-a-week schools, the supplementary afternoon schools, and the all-day schools which provide the child's total educational program.

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[93] George C. Decker, "NDEA Loans to Private Schools," School Life, 45:19-21, April, 1963.

[94] John N. Gummere, "The Independent School in American Culture," Teacher's College Record, 62:448-454, March, 1961.

[95] Francis Parkman, "The 'Typical' Independent School", Phi Delta Kappan, 45:128-131, December, 1963.

[96] William E. McManus, "The Administration and Financing of Catholic Schools," Phi Delta Kappan, 45:132-135, December, 1963.

Erickson postulated[99] that the role of the non-public schools was to provide needed diversity in the total educational picture of the nation. Hamlin[100] discussed the lack of sharply defined roles for public and non-public education and suggested that public education was being sharply challenged by non-public education because the proper roles of each have not been defined. Rossi[101] discussed the effect of Catholic education on Catholics, the individual, and society. The sociological study indicated that products of Catholic schools were not much different than products of public schools.

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[97] Arthur Ahlschwede, "The Protestant Schools," Phi Delta Kappan, 45:136-140, December, 1963.

[98] Joseph Kaminetsky, "The Jewish Day Schools," Phi Delta Kappan, 45:141-144, December, 1963.

[99] Donald Erickson, "On the Role of Non-public Schools" School Review, 69:338-53, No. 3, Autumn, 1961.

[100] H.M. Hamlin, "Are We Returning to Private Education?," Nations Schools, 55:63-64, March, 1955.

[101] Peter H. Rossi and Alice S. Rossi, "Background and Consequences of Parochial School Education," Harvard Educational Review, 27:168-199, Summer, 1957.

Other issues, with legal implications, were discussed in the journals. An example was the matter of shared-time,[102] which was being used in some areas, to provide a cooperative sharing of the students' time by church-related and secular schools.

Of a general nature concerned with legal aspects of education were articles which appeared on a more or less regular basis in magazines dealing with administration. Garber wrote many such articles on a variety of topics, as did Roach. Nolte recently began a regular series of this type of article in the American School Board Journal. Most of these articles were concerned with popular public school issues. Occasionally, these articles were concerned with legal topics, such as Garber's in Nations Schools,[103] of special interest to non-public schools, or church-state issues.

Roach and Hamilton each published a law letter for subscribers under the respective titles "School Law Review" and "School Law Letters." Both of these letters provided up-to-date information on cases litigated on school questions. Any cases reviewed in these letters concerned with non-public schools were reviewed as primary sources in the main portion of this study.

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[102] Walter A. Anderson and Theodore Powell, "Opinions Differ: Shared Time," NEA Journal, 53:28-30, March, 1964.

[103] Lee O. Garber, i.e., "Courts Disagree on Validity of Zoning Ordinances to Prohibit Private Schools in Certain Areas," Nations Schools, 59:79-81, January, 1957; and, "Four Big Educational Issues Dominate Court Cases," Nations Schools, 73:76-77, 126, 128, 130, March, 1964.

CHAPTER III

STATE CONSTITUTIONAL PROVISIONS RELATED TO NON-PUBLIC SCHOOLS

The purpose of this chapter was to record a summary of each reference to non-public schools in the constitutions of the fifty states. Every state constitution included at least one provision related to non-public schools.

I. STATE CONSTITUTIONAL REFERENCES TO NON-PUBLIC SCHOOLS

The references in the official constitution of each state to non-public schools were summarized in the text and a summarization and grouping of the references to non-public schools was included in the tables at the end of the chapter.

Alabama. The Constitution of Alabama of 1901, as amended, stated that the legislature cannot tax real or personal property used for school purposes;[1] corporations which operated a non-public school cannot be created by a special act of the legislature, but are to be organized under general laws, the franchise tax assessed against corporations is not applicable to strictly educational corporations, and charters of corporations are subject to amendment or repeal under general laws;[2] the legislature is granted power to establish schools through various persons, agencies, and municipalities, and may support schools in a manner the legislature prescribes;[3] all funds, except those exempted, from income or other taxes are to be applied to furtherance of education according to Section 256 of Article 14;[4] and the monies raised for the support of public schools may not be appropriated to the support of a sectarian or denominational school.[5]

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[1] Ala. Const., Art. 4, Sec. 91.

[2] Ibid., Art. 12, Sec. 229.

Alaska. The Constitution of the State of Alaska, 1959, as amended, stated that no law which makes a grant of special privileges or immunity can be passed;[6] the public schools open to all children of the state maintained and established by the legislature are to be free of sectarian control and no money is to be paid from public funds for the direct benefit of a religious or other private educational institution;[7] and all property used exclusively for nonprofit educational purposes is exempted from taxation.[8]

Arizona. The Constitution of the State of Arizona, 1910, as amended, stated that appropriation of public money or property for any religious instructional efforts is prohibited;[9] property used by educational associations or institutions not used or held for profit may be exempted from taxation by law;[10] no government or agency may lend its credit to any corporation;[11] no tax or public appropriation may be given to aid any private or sectarian school;[12] and corporations may not be created by special acts of the legislature, but may be formed, altered, regulated, or limited by general law.[13]

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[3] Ibid., Art. 14, Sec. 256.

[4] Ibid., Art. 14, Sec. 260.

[5] Ibid., Art. 14, Sec. 263.

[6] Alaska Constitution, Art. 1, Sec. 15.

[7] Ibid., Art. 7, Sec. 1.

[8] Ibid., Art. 9, Sec. 4.

[9] Ariz. Const., Art. 2, Sec. 12.

[10] Ibid., Art. 9, Sec. 2.

Arkansas. The Constitution of the State of Arkansas, 1874, as amended, stated that no state taxes may be used, or appropriations made, to sustain other than the common schools, except by a majority vote of both houses of the general assembly;[14] special acts conferring corporate powers for educational purposes are prohibited unless the corporations remain under the patronage and control of the state;[15] political subdivisions may not become stockholders in or lend credit to private corporations;[16] corporations are to be formed under general laws, but charters may be revoked whenever injurious to citizens of the state;[17] the state may not assume liabilities of private corporations;[18] the state and political subdivisions may not lend credit to a private enterprise;[19] and school buildings, grounds, and libraries and grounds used for school purposes are exempt from taxation.[20]

California. The California Constitution, Annotated, 1879, as amended, stated that no money may be appropriated or drawn from the state treasury for the benefit of any corporation or association not under the exclusive management and control of the state as a state institution;[21] public aid to support any sectarian, creedal, religious, or church school, including grants of property or real estate, is prohibited;[22] public credit may not be lent to aid any private corporation;[23] the legislature must encourage education for the public welfare;[24] no public money may be appropriated for any school not under exclusive control of officers of the public schools;[25] private corporations may be organized and regulated under general laws of the legislature, not by special acts;[26] the state may not lend credit or own stock in any private corporation;[27] and property used for religious and charitable purposes may be exempted from taxation by the legislature.[28]

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[11] Ibid., Art. 9, Sec. 7.

[12] Ibid., Art. 9, Sec. 10.

[13] Ibid., Art. 14, Sec. 2.

[14] Ark. Const., Art. 5, Sec. 31.

[15] Ibid., Art. 12, Sec. 2.

[16] Ibid., Art. 12, Sec. 5.

[17] Ibid., Art. 12, Sec. 6.

[18] Ibid., Art. 12, Sec. 12.

[19] Ibid., Art. 16, Sec. 1.

[20] Ibid., Art. 16, Sec. 5.

Colorado. The Constitution of the State of Colorado, 1876, as amended, stated that no appropriation may be made to any educational corporation, association, or community not under the absolute control of the state;[29] no aid from any public funds may be given to any church or sectarian society to aid any school, including grants of land;[30] children are exempted from compulsory education in the public schools if they are educated by other means;[31] properties used for school purposes not used or held for profit are exempt from taxation;[32] corporate charters are to be granted under general law, unless, the educational corporations created are created under control of the state;[33] and the state legislature reserves the right to alter, revoke, or annul the charter of any incorporation when it becomes injurious to the citizens of the state.[34]

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[21] Cal. Const., Art. 4, Sec. 22.

[22] *Ibid*., Art. 4, Sec. 30.

[23] *Ibid*., Art. 4, Sec. 31.

[24] *Ibid*., Art. 9, Sec. 1.

[25] *Ibid*., Art. 9, Sec. 8.

[26] *Ibid*., Art. 12, Sec. 1.

[27] *Ibid.*, Art. 12, Sec. 13.

[28] *Ibid*., Art. 13, Sec. 1c.

[29] Colo. Const., Art. 5, Sec. 34.

[30] *Ibid*., Art. 9, Sec. 7.

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Connecticut. The Constitution of the State of Connecticut, 1955, as amended, stated that each and every society of Christians may support and maintain teachers by any means they choose;[35] and no portion of the school fund may ever, be diverted to any other school than the common public schools.[36]

Delaware. The Constitution of the State of Delaware, Adopted 1897, as amended, stated that no subdivision of government may lend credit to, or become a shareholder in any private corporation;[37] no corporation may be created or regulated by special act, except those educational corporations sustained by the state, the legislature may by general law provide for the revocation of corporate charters for misuse or abuse of a charter, and special incorporation or general incorporation law requires concurrence of two-thirds of the general assembly;[38] if educated by other means children are exempted from attendance at free public schools;[39] no part of public funds may be appropriated for use by any sectarian, church, or denominational school, except that any property used for school property, if tuition is free, is exempt from taxation and assessment;[40] and no part of the public school fund may be used for anything other than support of the public schools.[41]

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[31] Ibid., Art. 9, Sec. 11.

[32] Ibid., Art. 10, Sec. 5.

[33] Ibid., Art. 15, Sec. 2.

[34] Ibid., Art. 15, Sec. 3.

[35] Conn. Const., Art. Seventh, Sec. 1.

[36] Ibid., Art. Eighth, Sec. 2.

[37] Del. Const., Art. 8, Sec. 8.

[38] Ibid., Art. 9, Sec. 1.

Florida. The Constitution of the State of Florida, 1885, as amended, stated that no money may be taken from the public treasury to aid any sectarian institution, directly or indirectly;[42] the legislature may provide for the incorporation of educational corporations by general law, but not by special act;[43] property used for literary and educational purposes may be exempted by law from taxation;[44] the state may not pledge its credit to or participate in any private enterprise;[45] no part of the school funds may be appropriated to or used to support any sectarian school;[46] and property used exclusively for scientific, literary, or educational purposes may be exempted from taxation.[47]

Georgia. The Constitution of the State of Georgia, 1945, as amended, stated that no money may be used from the public treasury to aid any sectarian institution;[48] corporate powers are to be granted only by general law;[49] intangible property held for the exclusive benefit of an educational corporation may by law be exempted from taxation, if it cannot benefit any individual and is not invested in real estate, and if the institutions are open to the general public;[50] the credit of the state may not be pledged to any corporation or association, neither can the state become a shareholder in such;[51] the general assembly may not authorize any political subdivision to contribute financially in any way to a private corporation;[52] and the general assembly may by law authorize grants from public funds directly to citizens for educational purposes.[53]

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[39] Ibid., Art. 10, Sec. 1.

[40] Ibid., Art. 10, Sec. 3.

[41] Ibid., Art. 10, Sec.4

[42] Fla. Const., Declaration of Rights, Sec.6.

[43] Ibid., Art. 3, Sec. 25.

[44] Ibid., Art. 9, Sec. 1.

[45] Ibid., Art. 9, Sec. 10.

[46] Ibid., Art. 12, Sec. 13.

[47] Ibid., Art. 16, Sec. 16.

Hawaii. The Constitution of the State of Hawaii, 1950, as amended, stated that the state must provide a system of free public schools, free from sectarian control, and such other educational institutions as are deemed desirable including physical facilities, and that no public funds may be appropriated for the support or benefit of any private educational or sectarian institution.[54]

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[48] Ga. Const., Bill of Rights, Art. 1, Ch. 2-1, Sec. 2-114, Para. XIV.

[49] Ibid., Art. 3, Ch. 2-19, Sec. 2-1917, Para. XVII.

[50] Ibid., Art. 7, Ch. 2-54, Sec. 2-5404, Para. IV.

[51] Ibid., Art. 7, Ch. 2-56, Sec. 2-5604, Para. IV.

[52] Ibid., Art. 7, Ch. 2-58, Sec. 2-5801, Para. I.

[53] Ibid., Art. 8, Ch. 2-75, Sec. 2-7502, Para. I.

[54] Hawaii Const., Art. 9, Sec. 1.

Idaho. The Constitution of the State of Idaho, 1890, as amended, stated that the loan of the state's credit to any private corporation is prohibited, nor may the state become a shareholder in any corporation, nor may any political subdivision loan to, or become responsible for any debt of a corporation or association;[55] no money may ever be appropriated from any public funds, including land grants, to support any school controlled by a religious denomination or sectarian influence;[56] unless educated by other means every child must attend the public schools;[57] all corporations must be organized under general laws of the state unless they are corporations for educational purposes exclusively controlled by the state, and the legislature may alter or revoke by law any charters existing at the time of adoption of the constitution;[58] and no municipal, county, town, or city corporation may lend its credit to any private corporation.[59]

Illinois. The Constitution of Illinois, 1870, as amended, stated that the state may not pay the debts of or give credit to any corporation;[60] public funds may never be appropriated to any school controlled by a sectarian denomination;[61] property used exclusively for school purposes may be exempted from taxation by general law;[62] and corporations are to be organized under general laws, unless the corporations for educational purposes are to remain under the patronage and control of the state.[63]

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[55] Idaho Const., Art. 8, Sec. 2, Sec. 4.

[56] Ibid., Art. 9, Sec. 5.

[57] Ibid., Art 9, Sec. 9.

[58] Ibid., Art. 11, Sec. 2-3.

[59] Ibid., Art. 12, Sec. 4.

[60] Ill. Const., Art. 4, Sec. 20.

[61] Ibid., Art. 8, Sec. 3.

[62] Ibid., Art. 9, Sec. 3.

Indiana. The Constitution of the State of Indiana, 1851, as amended, stated that no money may be drawn from the treasury for religious institutions;[64] the general assembly must encourage moral, intellectual, scientific, and agricultural improvement;[65] educational institutions may be exempted by law from taxation;[66] state debts, and county indebtedness for any incorporation, or loaning of credit to an incorporation, or assumption of any debts of a corporation is prohibited;[67] the state may not be a stockholder in any corporation or association;[68] and corporations may not be created by special act, but only under the general laws.[69]

Iowa. The Constitution of Iowa, 1857, as amended, stated that no public money or funds may be appropriated for private purposes unless allowed by two-thirds majority of the general assembly;[70] the credit of the state, or assumption of responsibility for an association or corporation debt, may never be extended by the state unless it is for the benefit of the state in time of war;[71] corporations must be created by general law, not special law;[72] and the general assembly is to encourage intellectual, moral, agricultural and scientific improvement.[73]

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[63] Ibid., Art. 11, Sec. 1.

[64] Ind. Const., Bill of Rights, Art., 1, Sec. 6.

[65] Ibid., Art. 8, Sec. 1.

[66] Ibid., Art. 10, Sec. 1.

[67] Ibid., Art. 10, Sec. 5-6.

[68] Ibid., Art. 11, Sec. 12.

[69] Ibid., Art. 11, Sec. 13.

[70] Iowa Const., Art. 3, Sec. 31.

Kansas. The Constitution of the State of Kansas, 1859, as amended, stated that no religious sect may ever control a part of the common school funds of the state;[74] property used for literary, educational, or scientific purposes is exempted from taxation;[75] and corporations may not be created under special acts, but under general laws, which may be repealed or amended.[76]

Kentucky. The Constitution of Kentucky, 1891, as amended, stated that no preference may be given by law to any religious society, nor may any man be forced to send his child to a school to which he may be conscientiously opposed;[77] the general assembly may not pass a special act granting a charter to any institution, nor may it amend the charter of an existing corporation;[78] institutions of education not for the profit of a person or corporation are exempt from taxation;[79] the Commonwealth may not lend credit to, or become a stockholder in a private corporation;[80] the monies accrued in the common school funds may be distributed only for the benefit of public schools and may not be appropriated for the use or aid of any church, sectarian, or denominational school;[81] and corporations guilty of abuse or misuse of corporate powers whenever becoming detrimental to the welfare of the citizens of the Commonwealth may have their charter revoked by general laws.[82]

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[71] Ibid., Art. 7, Sec. 1.

[72] Ibid., Art. 8, Sec. 1.

[73] Ibid., Art. 9, 2d, Sec. 3.

[74] Kan. Const., Art. 6, Sec. 8.

[75] Ibid., Art. 11, Sec. 1.

[76] Ibid., Art. 12, Sec. 1.

[77] Ky. Const., Bill of Rights, Sec. 5.

[78] Ibid., Legislative Department, Sec. 59, Seventeenth.

[79] Ibid., Revenue and Taxation, Sec. 170.

Louisiana. The Constitution of Louisiana, 1921, as amended, stated that the legislature may not pass special laws creating corporations, or laws renewing, amending, or explaining corporate charters;[83] no money may be used from the state treasury to aid any teacher of any denomination, directly, or indirectly, and no appropriation may be used from the state treasury for any private purposes to a person or community;[84] the state may not loan or pledge public credit to, purchase stock in, or assume any liabilities of any association or corporation;[85] educational property is exempted from taxation;[86] donations to educational institutions within the state are exempted from inheritance and donation taxes, and donations and legacies to educational institutions outside the state are exempt from such taxes if the state in which the institution is located also exempts such gifts from taxation on a reciprocal basis;[87] the state board of education has power to approve private schools when curriculum is equal to that of public schools and the certificate of such schools carries the same privileges as those from state schools;[88] no appropriations of public funds may be made to a private or sectarian school;[89] except the legislature may provide financial assistance directly to school children for attendance at a non-sectarian private school;[89A] and the legislature must enact general laws for creation and regulation of corporations.[90]

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[80] Ibid., Sec. 177.

[81] Ibid., Education, Sec. 184, 186, 189.

[82] Ibid., Corporations, Sec. 205.

[83] La. Const., Art. 4, Sec. 4.

[84] Ibid., Art. 4, Sec. 8.

[85] Ibid., Art. 4, Sec. 12.

[86] Ibid., Art. 10, Sec. 4.

Maine. The Constitution of the State of Maine, 1820, as amended, stated that the legislature must provide for all matters of private legislation through general laws;[91] corporations must be formed under general laws;[92] and the legislature must require the towns to maintain public schools, and encourage and suitably endow academies and seminaries of learning within the state, if the legislature retains the right to control such literary institutions.[93]

Maryland. The Constitution of Maryland, 1867, as amended, stated that the legislature ought to encourage education generally;[94] the credit of the state may not be extended to any association or corporation;[95] corporations may be formed under general laws, subject to repeal or modification by the legislature, except in special cases, such as corporations existing before the adoption of the constitution;[96] no county may extend its credit to aid any corporation unless authorized by an act of the general assembly;[97] and the school fund of the state may be appropriated only for the purposes of education.[98]

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[87] *Ibid.*, Art. 10, Sec. 7.

[88] *Ibid.*, Art. 12, Sec. 7.

[89] *Ibid.*, Art. 12, Sec. 13.

[89A] *Ibid.*, Art. 12, Sec. 1.

[90] *Ibid.*, Art. 13, Sec. 5.

[91] Me. Const., Art. 4, Pt. Third, Sec. 13.

[92] *Ibid.*, Sec. 14.

[93] *Ibid.*, Literature, Art. 8.

[94] Md. Const., Declaration of Rights, Sec. 43.

Massachusetts. The Constitution of the Commonwealth of Massachusetts, 1870, as amended, stated that it is the duty of the legislatures and magistrates in future years to encourage private educational societies for educational purposes,[99] the religious societies of the Commonwealth forever have the right to elect their own teachers, and maintain religious instruction;[100] no money raised by taxation may be given to any denominational or sectarian school or any school wherein sectarian doctrine is taught;[101] every charter or act of incorporation of an institution is always subject to amendment;[102] and the credit of the Commonwealth may never be given to a corporation privately owned or managed.[103]

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[95] Ibid., Art. 3, Sec. 34.

[96] Ibid., Art. 3, Sec. 48.

[97] Ibid., Art. 3, Sec. 54.

[98] Ibid., Art. 8, Sec. 3.

[99] Mass. Const., Pt. 2, Ch. 5, Sec. II.

[100] Ibid., Articles of Amendment, Art. 3.

[101] Ibid., Art. 18.

[102] Ibid., Art. 59.

[103] Ibid., Art. 62.

Michigan. The Constitution of the State of Michigan, 1963, as amended, stated that no money may be appropriated or property appropriated belonging to the state for the benefit of any religious society or religious seminary;[104] the assent of two-thirds of the legislature is needed for the appropriation of any public money or property for a local or private purpose;[105] no city or village may loan its credit or collect a tax for any purpose other than a public purpose;[106] the means of education and schools are to be forever encouraged;[107] educational non-profit corporations are exempted from taxes;[108] and state credit or interest may not be lodged in any private corporation.[109]

Minnesota. The Constitution of Minnesota, 1857, stated that no money may be paid from the treasury for the benefit of a religious group or seminary;[110] no special laws may be passed for corporate purposes, or to authorize public taxation for private purposes;[111] no public monies or properties may be used for the support of schools wherein distinctive doctrines of a particular Christian sect are taught;[112] academies, seminaries of learning, and property used for a public purpose are to be exempt from taxation, except that municipal corporations may levy and collect assessments for local improvements on the property benefited;[113] the credit of the state may not be given to any association or corporation, except as provided by the constitution;[114] and no corporation may, except for municipal purposes, be formed by special acts.[115]

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[104] Michigan Const., Art. 1, Sec. 4.

[105] Ibid., Art. 4, Sec. 30.

[106] Ibid., Art. 7, Sec. 26.

[107] Ibid., Art. 8, Sec. 1.

[108] Ibid., Art. 9, Sec. 4.

[109] Ibid., Art. 9, Sec. 18-19.

[110] Minn. Const., Art. 1, Sec. 16.

[111] Ibid., Art. 4, Sec. 33.

[112] Ibid., Art. 8, Sec. 2.

Mississippi. The Constitution of the State of Mississippi, 1890, as amended, stated that no law may be passed except by two-thirds of the majority of the legislature to grant a donation to any person or object, except vote for a sectarian use or purpose is prohibited;[116] the legislature may not pass private laws for support, organization, or management of any private school, or grant a private school any privileges;[117] and no part of the school funds may be ever controlled by any religious sect or appropriated toward the support of any sectarian school.[118]

Missouri. The Constitution of Missouri, 1945, as amended, stated that no money may be removed from the public treasury, indirectly or directly in aid of any religious teacher;[119] the legislature may not give the credit of the state to any association or corporation;[120] no political subdivision may lend its credit or grant monies to any corporation, association, or individual except as provided by the constitution;[121] no public aid may ever be given to sustain any private school controlled by a religious denomination;[122] all property not held for corporate or private profit and used exclusively for school purposes may be exempted from taxation by general law;[123] and all corporations must be organized and controlled under general law.[124]

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[113] Ibid., Art. 9, Sec. 1.

[114] Ibid., Art. 9, Sec. 2.

[115] Ibid., Ar. 10, Sec. 2.

[116] Miss. Const., Art. 4, Sec. 66.

[117] Ibid., Art. 4, Sec. 90(p).

[118] Ibid., Art. 8, Sec. 208.

[119] Mo. Const., Art. 1, Sec. 7.

[120] Ibid., Art. 3, Sec. 39.

Montana. The Constitution of the State of Montana, 1889, as amended, stated that no governmental agency may ever make appropriations or pay for the support of any school controlled by any church, sect, or denomination;[125] property used exclusively for educational purposes is exempt from taxation;[126] and all incorporations are to be controlled by general law, unless under exclusive control of the state, except that the legislature may revoke any charter of a corporation in its opinion injurious to the citizens of the state.[127]

Nebraska. The Constitution of the State of Nebraska, 1875, as amended, stated that the English language is the official language to be used and taught in public, private, denominational, and parochial schools;[128] no public funds may be used to aid any sectarian school, and no religious test may be required of any teacher by any educational institution supported in part by taxation;[129] property used for educational purposes exclusively, when not used for profit, is exempt from taxation;[130] the legislature must make provision for corporations in general law, and no corporations may be organized under special law unless they remain under the patronage and control of the state;[131] and the credit of the state may never be loaned in aid of any association or corporation.[132]

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[121] Ibid., Art. 6, Sec. 23.

[122] Ibid., Art. 9, Sec. 8.

[123] Ibid., Art. 10, Sec. 6.

[124] Ibid., Art. 11, Sec. 2.

[125] Mont. Const., Art. 11, Sec. 8.

[126] Ibid., Art. 12, Sec. 2.

[127] Ibid., Art. 15, Sec. 2-3.

[128] Neb. Const., Art. 1, Sec. 27.

[129] Ibid., Art. 7, Sec. 11.

Nevada. The Constitution of the State of Nevada, 1864, as amended stated that there are to be no special acts relating to corporate powers;[133] the state may not loan its credit, or be interested in the stock of any corporation, except those corporations formed for educational or charitable purposes;[134] no other political subdivision may loan its credit or become a shareholder in any other corporation, except railroads;[135] property used for educational purposes may be exempted from taxes;[136] the legislature must encourage educational improvements;[137] and no public funds may be used for any sectarian purpose.[138]

New Hampshire. The Constitution of the State of New Hampshire, 1784, as amended, stated that the general court may not give or lend its credit to any corporation organized for profit;[139] and it must be the duty of the legislature to encourage education in private and public institutions, except that no public monies may be used in any sectarian institution.[140]

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[130] Ibid., Art. 8, Sec. 2.

[131] Ibid., Art. 12, Sec. 1.

[132] Ibid., Art. 13, Sec. 3.

[133] Nev. Const., Art. 8, Sec. 1.

[134] Ibid., Art. 8, Sec. 9.

[135] Ibid., Art. 8, Sec. 10.

[136] Ibid., Art. 10, Sec. 1.

[137] Ibid., Art. 11, Sec. 1.

[138] Ibid., Art. 11, Sec. 10.

[139] N.H. Const., General Court, Art. 5.

New Jersey. The Constitution of 1947 of the State of New Jersey, as amended, stated that educational corporations may conduct gambling activities if the voters of the municipality approve and all proceeds are for educational purposes, and such activities are controlled by law;[141] the legislature must provide general laws for conferring of corporate powers;[142] exemption from taxation may be provided by general law, except exemption is granted by the constitution to nonprofit educational corporations;[143] the state or its political subdivisions may not lend their credit to, or loan money, or obtain stock in any corporation;[144] the legislature may not appropriate any money from the perpetual school fund for any purpose other than the free public schools;[145] and the legislature may provide for the transportation of children between 5 and 18 years to and from any school.[146]

New Mexico. The Constitution of the State of New Mexico, 1911, as amended, stated that no appropriation may be made for any educational purposes not under the absolute control of the state;[147] property used for educational purposes not for profit is exempt from tax;[148] no governmental agency may aid any private corporation through lending credit or making donations;[149] the legislature must provide for the organization of corporations by general law;[150] no public funds or proceeds may ever be used for the support of any private, sectarian, or denominational school;[151] and every child must attend a public or other school as prescribed by law.[152]

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[140] *Ibid.*, Encouragement of Literature, Trades, etc., Art. 83.

[141] N.J. Const., Art. 4, Sec. 7, Par. 2, A., B.

[142] Ibid., Art. 4, Sec. 7, Par. 9.

[143] Ibid., Art. 8, Sec. 1, Par. 2.

[144] *Ibid.*, Art. 8, Sec. 2, Par. 1, and Sec. 3, Par. 2 and Par. 3.

[145] *Ibid.*, Art. 8, Sec. 4, Par. 2.

[146] *Ibid.*, Art. 8, Sec. 4, Par. 3.

New York. The Constitution of the State of New York, 1938, as amended, stated that no money or properties may be appropriated for local or private purposes, except by a two-thirds vote of the legislature;[153] a gift or loan of state credit or money is prohibited to any private undertaking;[154] gifts or loans of property or credit of local subdivisions for private purposes is prohibited;[155] corporations may be formed under general laws, except at the discretion of the legislature when special acts may seem appropriate;[156] public property or money may not be used to aid any institution of learning under the control of a denomination, except for inspection purposes, but the legislature may provide for the transportation of children to or from any school;[157] and any educational corporation not operated for profit is by the constitution exempted from taxation.[158]

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[147] N.M. Const., Art. 4, Sec. 31.

[148] *Ibid.*, Art. 8, Sec. 3.

[149] *Ibid.*, Art. 9, Sec. 14.

[150] *Ibid.*, Art. 11, Sec. 13.

[151] *Ibid.*, Art. 12, Sec. 3.

[152] *Ibid.*, Art. 12, Sec. 5.

[153] N.Y. Const., Art. 12, Sec. 5.

[154] *Ibid.*, Art. 7, Sec. 8.

[155] *Ibid.*, Art. 8, Sec. 1.

[156] *Ibid.*, Art. 10, Sec. 1.

North Carolina. The Constitution of North Carolina, 1868, as amended, stated that the power of taxation must be used by the state for a public purpose;[159] the general assembly may exempt property of educational corporations from taxation;[160] no political subdivision may expend any monies unless authorized by law;[161] education and its means must be encouraged;[162] properties in the school funds must be used for the benefit of free public schools;[163] each child must attend the public or some other school;[164] and all corporations not under exclusive control of the state must be organized under general laws, except the charter of any corporation may be repealed by a special act.[165]

North Dakota. The Constitution of North Dakota, 1889, as amended, stated that all corporations, except those educational corporations under the exclusive control of the state, must be organized under general law;[166] the legislative assembly must promote educational endeavor;[167]

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[157] Ibid., Art. 11, Sec. 3.

[158] Ibid., Art. 16, Sec. 1.

[159] N.C. Const., Art. 5, Sec. 3.

[160] Ibid., Art. 5, Sec. 5.

[161] Ibid., Art. 7, Sec. 7.

[162] Ibid., Art. 9, Sec. 1.

[163] Ibid., Art. 9, Sec. 4-5.

[164] Ibid., Art. 9, Sec. 11.

[165] Ibid., Art. 8, Sec. 1.

[166] N.D. Const., Art. 7, Sec. 131.

[167] Ibid., Art. 8, Sec. 151.

no money appropriated for use of the public schools may be used in any sectarian schools;[168] the property of educational corporations used exclusively for schools is exempted from taxation;[169] and the state may not loan or extend its credit to any association or corporation.[170]

Ohio. The Constitution of Ohio, 1851, as amended, stated that it is the duty of the legislature to pass laws to encourage schools and the means of instruction;[171] no religious sect may control any part of the school funds of the state;[172] no political subdivision may become joint owner or stock holder, or assume the debts of any corporation;[173] general laws may be passed to exempt from taxation institutions used for charitable purposes;[174] and corporations must be formed under general laws and not special acts.[175]

Oklahoma. The Constitution of the State of Oklahoma, 1907, as amended, stated that no public money may ever be appropriated or applied to any religious teacher, dignitary, or institution;[176] no private corporation may be created by a special act;[177] property used exclusively for schools is exempt from taxation;[178] no political subdivision may aid any corporation;[179] and the legislature may provide for compulsory attendance at some school for all children between 8 and 16 years, for at least three months in a year.[180]

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[168] Ibid., Art. 8, Sec. 152.

[169] Ibid., Art. 11, Sec. 176.

[170] Ibid., Art. 12, Sec. 185.

[171] Ohio Const., Art. 1, Sec. 7.

[172] Ibid., Art. 6, Sec. 2.

[173] Ibid., Art. 8, Sec. 4-6.

[174] Ibid., Art. 12, Sec. 2.

[175] Ibid., Art. 13, Sec. 1-2.

[176] Okla. Const., Art. 2, Sec. 5.

[177] Ibid., Art. 9, Sec. 38.

[178] Ibid., Art. 10, Sec. 6.

Oregon. The Constitution of Oregon, 1859, as amended, stated that no money may be paid from the treasury for the support of any religious institution;[181] corporations may not be created by special acts of the legislature;[182] and no political subdivisions may be stockholders, loan credit to, assume debts for, or aid any corporation or association.[183]

Pennsylvania. The Constitution of the State of Pennsylvania, 1874, as amended, stated that the general assembly may not pass any special laws for the creation of corporations or extension of their charters;[184] no appropriation may be made to any educational institution not under the control of the state unless approved by a vote of two-thirds of the members of each house,[185] but no appropriations may be made to any institution under sectarian control;[186] the general assembly may by general law exempt from taxes non-profit corporations;[187] neither the credit of the state or other political subdivisions may be lent, or money appropriated for any corporation, institution, or individual;[188] and no money raised for the support of the public schools may be used to support any sectarian school.[189]

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[179] Ibid., Art. 10, Sec. 17.

[180] Ibid., Art. 13, Sec. 4.

[181] Ore. Const., Art. 1, Sec. 5.

[182] Ibid., Art. 11, Sec. 2.

[183] Ibid., Art. 11, Sec. 6-9.

[184] Pa. Const., Art. 3, Sec. 7.

[185] Ibid., Art. 3, Sec. 17.

[186] Ibid., Art. 3, Sec. 18.

[187] Ibid., Art. 9, Sec. 1.

Rhode Island. The Constitution of the State of Rhode Island and Providence Plantations, 1842, as amended, stated that all laws must be made for the good of the whole state;[190] any bill appropriating public funds for local or private purposes requires a two-thirds majority of the general assembly;[191] the general assembly may provide by law for creation and control of corporations;[192] and the general assembly must adopt all means to secure for the people the advantages and opportunities of education.[193]

South Carolina. The Constitution of the State of South Carolina, 1895, as amended, stated that the general assembly may not enact local or special laws to incorporate educational institutions not under the control of the state, except that educational corporations may be given special charters if terms of a gift or bequest require special incorporation;[194] real estate actually used by a nonprofit corporation is exempted from taxation;[195] the state may not lend its credit or be a shareholder in any association or corporation;[196] and no public property or funds may aid directly or indirectly any sectarian institution.[197]

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[188] Ibid., Art. 9, Sec. 6-7.

[189] Ibid., Art. 10, Sec. 2.

[190] R.I. Const., Art. 1, Sec. 2.

[191] Ibid., Art. 4, Sec. 14.

[192] Ibid., Art. 9, Sec. 1.

[193] Ibid., Art. 12, Sec. 1.

[194] S.C. Const., Art. 3, Sec. 34, III, XI.

[195] Ibid., Art. 10, Sec. 4.

[196] Ibid., Art. 10, Sec. 6.

South Dakota. The Constitution of South Dakota, 1889, as amended, stated that no money or property of the state may be given for the benefit of any sectarian or religious institution;[198] no property, credit, or money may be ever given by the state to any sectarian school;[199] the legislature must by general law exempt from taxation all property used for school purposes;[200] the state may loan or give credit or aid to any association or corporation organized to benefit South Dakota, if approved by two-thirds of the legislature;[201] and all educational corporations must be created under the general laws, unless they are under the complete control of the state.[202]

Tennessee. The Constitution of Tennessee, 1870, as amended, stated that the general assembly may authorize the counties and incorporated towns to impose taxes for county and corporation purposes by law, and all property taxed therefor, but credit of the county or town may not be given in aid, or the county or town may not become a stockholder in any association or corporation, without the approval of three-fourths of the votes cast in an election;[203] the legislature may exempt from taxation all property held and used for purely literary or educational purposes;[204] the credit of the state may not be loaned or extended to aid any association or corporation;[205] no special laws for corporations or individuals may be passed;[206] and education is to be cherished and promoted by the state, but the school funds are to be perpetuated for the benefit of the common schools.[207]

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[197] Ibid., Art. 11, Sec. 9.

[198] S.D. Const., Art. 6, Sec. 3.

[199] Ibid., Art. 8, Sec. 16.

[200] Ibid., Art. 11, Sec. 6.

[201] Ibid., Art. 13, Sec. 1.

[202] Ibid., Art. 17, Sec. 1.

[203] Tenn. Const., Art. 2, Sec. 28.

[204] Ibid., Art. 2, Sec. 29.

Texas. The Constitution of the State of Texas, 1876, as amended, stated that no money or property of the state may be used for the benefit of any sect or religious seminary;[208] the legislature may not loan or pledge the credit of the state to aid any association or incorporation;[209] no grants of public money may be given to any individual, association, or corporation;[210] the legislature may not authorize any political subdivision to lend its credit or grant money, or become a stockholder in a private corporation or association;[211] no part of the permanent or available school funds may be used for any sectarian school;[212] property and buildings used for religious purposes producing no revenue are exempted from taxation;[213] no private corporation may be controlled by other than general laws;[214] and no appropriations for private or individual purposes may be made.[215]

Utah. The Constitution of Utah, 1896, as amended, stated that no public money or property may be appropriated for religious exercise or instruction or to support any ecclesiastical establishment;[216] public credit may not be lent to any corporate undertaking;[217] public aid to church schools is prohibited;[218] and all corporations must be formed and controlled under general law.[219]

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[205] Ibid., Art. 2, Sec. 31.

[206] Ibid., Art. 11, Sec. 8.

[207] Ibid., Art. 11, Sec. 12.

[208] Texas Const., Art. 1, Sec. 7.

[209] Ibid., Art. 3, Sec. 50.

[210] Ibid., Art. 3, Sec. 51.

[211] Ibid., Art. 3, Sec. 52.

[212] Ibid., Art. 7, Sec. 5.

[213] Ibid., Art. 8, Sec. 2.

[214] Ibid., Art. 12, Sec. 1-2.

[215] Ibid., Art. 16, Sec. 6.

Vermont. The Constitution of the State of Vermont, 1793, as amended, stated that laws for the encouragement of learning and virtue ought to be kept in force, and religious societies and others united to promote learning and religion should be encouraged;[220] and no laws are to be passed of a special incorporation nature, unless the institutions are to be under complete control of the state.[221]

Virginia. The Constitution of Virginia, 1902, as amended, stated that the general assembly may not make any appropriations to any institution which is not completely under the control of the state;[222] the general assembly may provide for compulsory education;[223] no public funds may be appropriated to any school not owned and controlled by the state or some political subdivision thereof, except the general assembly may appropriate funds for educational purposes in public and nonsectarian private schools;[224] the general assembly may not control or assist any corporation by special laws, but only through general laws;[225] and property is exempted from taxation which is owned and used by incorporated institutions of learning operated not for profit.[226]

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[216] Utah Const., Art. 1, Sec. 4.

[217] *Ibid.*, Art. 6, Sec. 31.

[218] *Ibid.*, Art. 10, Sec. 13.

[219] *Ibid.*, Art. 12, Sec. 1.

[220] Vt. Const., Ch. 2, Sec. 64.

[221] *Ibid.*, Ch. 2, Sec. 65.

[222] Va. Const., Art. 4, Sec. 67.

[223] *Ibid.*, Art. 9, Sec. 138.

Washington. The Constitution of the State of Washington, 1889, as amended, stated that no public money or property may be appropriated for any religious establishment, exercise, or instruction;[227] the legislature may exempt certain properties from taxation;[228] the credit of the state or any political subdivision may not be lent to any association or corporation, nor may the subdivision become a shareholder;[229] all schools supported in part or in whole from public funds must be forever free from the influence of sectarianism;[230] and all corporations may be regulated, limited, or restrained by law.[231]

West Virginia. The Constitution of West Virginia, 1872, as amended, stated that the legislature may not confer any privileges or advantages on any religious society, and every person is free to select his own religious instructor;[232] property used for educational purposes may be exempted from taxation;[233] the credit of the state may not be granted to any corporation, nor may the state become a stockholder in any corporation;[234] no corporation may be created by special law;[235] and the legislature must encourage intellectual and scientific improvement.[236]

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[224] Ibid., Art. 9, Sec. 141.

[225] Ibid., Art. 12, Sec. 154.

[226] Ibid., Art. 13, Sec. 183.

[227] Wash. Const., Art. 1, Sec. 11.

[228] Ibid., Art. 7, Sec. 1.

[229] Ibid., Art. 8, Sec. 5, Sec. 7.

[230] Ibid., Art. 9, Sec. 4.

[231] Ibid., Art. 12, Sec. 1.

[232] W.Va. Const., Art. 3, Sec. 15.

[233] Ibid., Art. 10, Sec. 1.

Wisconsin. The Constitution of the State of Wisconsin, 1848, as amended, stated that no monies may be drawn from the public treasury for the benefit of any religious society, or religious or theological seminary;[237] the credit of the state may never be given to aid any association or corporation;[238] and all corporations must be formed under the general laws unless specifically exempted by the legislature.[239]

Wyoming. The Constitution of the State of Wyoming, 1890, as amended, stated that no money of the state may ever be given to any religious institution;[240] no appropriation may be made for educational purposes to any person or corporation not under the absolute control of the state, nor to any sectarian institution;[241] the school funds must always be used for the support of free public schools, and no portion may ever be used to support any private school, academy, or sectarian institution of learning;[242] the legislature must provide for the organization of corporations by general law and all powers of corporations by general law and all powers of corporations are under the control of the state; [243] and no political subdivision may loan, or give credit, or aid any individual, association, or corporation.[244]

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[234] *Ibid.*, Art. 10, Sec. 6.

[235] *Ibid.*, Art. 11, Sec. 1.

[236] *Ibid.*, Art. 12, Sec. 12.

[237] Wis. Const., Art. 1, Sec. 18.

[238] *Ibid.*, Art. 8, Sec. 3.

[239] *Ibid.*, Art. 11, Sec. 1.

[240] Wyo. Const., Art. 1, Sec. 19.

[241] *Ibid.*, Art. 3, Sec. 36.

[242] *Ibid.*, Art. 7, Sec. 7-9.

II. SUMMARIZATION OF STATE CONSTITUTIONAL REFERENCES TO NON-PUBLIC SCHOOLS

The references from the constitutions of the fifty states to non-public schools were arranged in four tables. The following four tables contained citations concerned with miscellaneous matters, corporate matters, tax exemption, and public aid for non-public schools.

Table I. The data in Table I were concerned with miscellaneous matters treated in the several constitutions such as school funds, special laws, encouragement of learning, compulsory attendance, freedom of choice, approval of schools, private educational societies, special taxation levies, English language, transportation, gambling activity, and general welfare. There were 38 references in the constitutions to these miscellaneous matters. The references were found in the constitutions of 32 of the states.

Table II. The data in Table II were concerned with corporate matters related to non-public schools. Fine distinctions existed among provisions by various states, but 46 of the 50 states made some provision in their constitutions for the general regulation, organization, and supervision of private corporations of the type which may and do operate educational institutions.

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[243] *Ibid.*, Art. 10, Sec. 1-2

[244] *Ibid.*, Art. 16, Sec. 6.

TABLE I

STATE CONSTITUTIONAL REFERENCES TO NON-PUBLIC SCHOOLS CONCERNED WITH MISCELLANEOUS MATTERS

State	Citation	Topic
Alabama	Art. 14, Sec. 260	School funds
Alaska	Art. 1, Sec. 15	No special laws allowed
California	Art. 9, Sec. 1	Encourage learning
Colorado	Art. 9, Sec. 11	Compulsory attendance
Connecticut	Art. Seventh, Sec. 1	Freedom of choice
Delaware	Art. 10, Sec. 1	Compulsory attendance
Idaho	Art. 9, Sec. 9	Compulsory attendance
Indiana	Art. 1, Sec. 8	Encourage learning
Iowa	Art. 8, Sec. 1	Encourage learning
Kentucky	B. Rts., Sec. 5	Freedom of choice
Louisiana	Art. 12, Sec. 7	Approval of schools
Maine	Art. 8	Encourage learning
Maryland	Dec. Rts., Sec. 43	Encourage learning
Maryland	Art. 8, Sec. 3	School funds
Massachusetts	Pt. 2, Ch. 5, Sec. II	Encourage private educational societies
Massachusetts	Art. Am., Art. 3	Freedom of choice
Michigan	Art. 8, Sec. 1	Encourage learning
Minnesota	Art. 9, Sec. 1	Special levy permitted
Nebraska	Art. 1, Sec. 27	English required
Nevada	Art. 11, Sec. 1	Encourage education
New Hampshire	Art. 83	Encourage education
New Jersey	Art. 8, Sec. 4, Par. 3	Transportation provision
New Jersey	Art. 4, Sec. 7, Par. 2	Gambling activity
New Mexico	Art. 12, Sec. 5	Compulsory attendance
New York	Art. 11, Sec. 3	Transportation provision
North Carolina	Art. 9, Sec. 1	Education encouraged
North Carolina	Art. 9, Sec. 11	Compulsory attendance
North Dakota	Art. 8, Sec. 151	Education encouraged
Ohio	Art. 1, Sec. 7	Encourage schools
Oklahoma	Art. 13, Sec. 4	Compulsory attendance
Rhode Island	Art. 1, Sec. 2	General welfare
Rhode Island	Art. 12, Sec. 1	Encourage education
Tennessee	Art. 11, Sec. 12	Promote education
Vermont	Ch. 2, Sec. 64	Promote learning
Virginia	Art. 9, Sec. 138	Compulsory education
West Virginia	Art. 3, Sec. 15	Freedom of choice
West Virginia	Art. 12, Sec. 12	Encourage schooling
Wyoming	Art. 7, Sec. 7-9	School funds

TABLE II

STATE CONSTITUTIONAL REFERENCES TO NON-PUBLIC SCHOOLS CONCERNED WITH CORPORATIONS

State	Citations
Alabama	Art. 12, Sec. 229
Arizona	Art. 14, Sec. 2
Arkansas	Art. 12, Sec. 2; Art. 12, Sec. 6
California	Art. 12, Sec. 1
Colorado	Art. 15, Sec. 2,3
Delaware	Art. 9, Sec. 1
Florida	Art. 3, Sec. 25
Georgia	Art. 3, Ch. 2-19, Sec. 2-1917
Idaho	Art. 11, Sec. 2,3
Illinois	Art. 11, Sec. 1
Indiana	Art. 11, Sec. 13
Iowa	Art. 8, Sec. 1
Kansas	Art. 12, Sec. 1
Kentucky	Sec. 59, Seventeenth; Sec. 205
Louisiana	Art. 4, Sec. 4; Art. 13, Sec. 5
Maine	Art. 4, pt. 3d, Sec. 13-14
Maryland	Art. 3, Sec. 48
Massachusetts	Art. Am., Art. 59
Minnesota	Art. 4, Sec. 33; Art. 10, Sec. 2
Mississippi	Art. 4, Sec. 90(p)
Missouri	Art. 11, Sec. 2
Montana	Art. 15, Sec. 2-3
Nebraska	Art. 12, Sec. 1
Nevada	Art. 8, Sec. 1
New Hampshire	Art. 83
New Jersey	Art. 4, Sec. 7, Par. 9
New Mexico	Art. 11, Sec. 13
New York	Art. 10, Sec. 1
North Carolina	Art. 8, Sec. 1
North Dakota	Art. 7, Sec. 131
Ohio	Art. 13, Sec. 1-2
Oklahoma	Art. 9, Sec. 38
Oregon	Art. 11, Sec. 2
Pennsylvania	Art. 3, Sec. 7
Rhode Island	Art. 9, Sec. 1
South Carolina	Art. 3, Sec. 34
South Dakota	Art. 17, Sec. 1
Tennessee	Art. 11, Sec. 8
Texas	Art. 12, Sec. 1-2
Utah	Art. 12, Sec. 1

TABLE II (Continued)

State	Citations
Vermont	Ch. 2, Sec. 65
Virginia	Art. 12, Sec. 154
Washington	Art. 12, Sec. 1
West Virginia	Art. 11, Sec. 1
Wisconsin	Art. 11, Sec. 1
Wyoming	Art. 10, Sec. 1-2

Table III. The data in Table III were concerned with tax exemptions related to non-public schools. There were distinctions in the constitutions which were of necessity left to the courts to interpret. In some states non-public schools were exempted from taxation by the constitution, in some states the constitution permitted the legislature to exempt some types of institutions from certain kinds of taxes, in some states the matter of tax exemption was left completely to the will of the legislature, while in other states more detail was written into the constitution. In 35 state constitutions there were 38 references to tax exemption construed to apply to non-public schools.

Table IV. The data in Table IV were concerned with references in the constitutions to matters related to aid to non-public schools. Forty-nine of the fifty states included at least one reference to aid for non-public schools. The Vermont constitution contained no direct reference to this matter, although generally, the First and Fourteenth Amendments to the United States Constitution were considered applicable to all states in the matter of direct aid to sectarian institutions. In the 49 constitutions cited there were 127 references to non-public schools which were used in this study. Although concerned with many specifics, generally the constitutional references dealt with certain prohibitions to aid from the state or other political subdivisions, lending of credit by governments, lending aid under certain conditions, and prohibitions specifically applied to sectarian institutions.

TABLE III

STATE CONSTITUTIONAL REFERENCES TO NON-PUBLIC SCHOOLS CONCERNED WITH TAX EXEMPTION

State	Citations
Alabama	Art. 4, Sec. 91; Art. 12, Sec. 229
Alaska	Art. 9, Sec. 4
Arizona	Art. 9, Sec. 2
Arkansas	Art. 16, Sec. 5
California	Art. 13, Sec. 1c
Colorado	Art. 10, Sec. 5
Delaware	Art. 10, Sec. 3
Florida	Art. 9, Sec. 1; Art. 16, Sec. 16
Georgia	Art. 7, Ch. 5-54, Sec. 2-5404
Illinois	Art. 9, Sec. 3
Indiana	Art. 10, Sec. 1
Kansas	Art. 11, Sec. 1
Kentucky	Sec. 170
Louisiana	Art. 10, Sec. 4; Art. 10, Sec. 7
Michigan	Art. 9, Sec. 4
Minnesota	Art. 9, Sec. 1
Missouri	Art. 10, Sec. 6
Montana	Art. 12, Sec. 2
Nebraska	Art. 8, Sec. 2
Nevada	Art. 10, Sec. 1
New Jersey	Art. 8, Sec. 1, Par. 2
New Mexico	Art. 8, Sec. 3
New York	Art. 16, Sec. 1
North Carolina	Art. 5, Sec. 5
North Dakota	Art. 11, Sec. 176
Ohio	Art. 12, Sec. 2
Oklahoma	Art. 10, Sec. 6
Pennsylvania	Art. 9, Sec. 1
South Carolina	Art. 10, Sec. 4
South Dakota	Art. 11, Sec. 16
Tennessee	Art. 2, Sec. 29
Texas	Art. 8, Sec. 2
Virginia	Art. 13, Sec. 183
Washington	Art. 12, Sec. 1
West Virginia	Art. 10, Sec. 1

TABLE IV

STATE CONSTITUTIONAL REFERENCES TO NON-PUBLIC SCHOOLS CONCERNED WITH PUBLIC AID TO NON-PUBLIC SCHOOLS

State	Citations
Alabama	Art. 14, Sec. 256; Art. 14, Sec. 263
Alaska	Art. 7, Sec. 1
Arizona	Art. 2, Sec. 12; Art. 9, Sec. 7; Art. 9, Sec. 10
Arkansas	Art. 5, Sec. 31; Art. 12, Sec. 5; Art. 12, Sec. 12; Art. 16, Sec. 1
California	Art. 4, Sec. 22; Art. 4, Sec. 30; Art. 4, Sec. 31; Art. 9, Sec. 8; Art. 12, Sec. 13
Colorado	Art. 5, Sec. 34; Art. 9, Sec. 7
Connecticut	Art. Eighth, Sec. 2
Delaware	Art. 8, Sec. 8; Art. 10, Sec. 3,4
Florida	Dec. Rt., Sec. 6; Art. 9, Sec. 10
Georgia	Art. 1, Ch. 2-1, Sec. 2-114; Art. 7, Ch. 2-56, Sec. 2-5604; Art. 7, Ch. 2-58, Sec. 2-5801; Art. 8, Ch. 2-75, Sec. 2-7502
Hawaii	Art. 9, Sec. 1
Idaho	Art. 8, Sec. 2; Art. 8, Sec. 4; Art. 9, Sec. 5; Art. 12, Sec. 4
Illinois	Art. 4, Sec. 20; Art. 8, Sec. 3
Indiana	Art. 1, Sec. 6; Art. 10, Sec. 5-6; Art. 11, Sec. 12
Iowa	Art. 3, Sec. 31; Art. 7, Sec. 1
Kansas	Art. 6, Sec. 8
Kentucky	Sec. 177; Sec. 184; Sec. 186; Sec. 189
Louisiana	Art. 4, Sec. 8; Art. 4, Sec. 12; Art. 12, Sec. 13; Art. 12, Sec. 1
Maine	Art. 8
Maryland	Art. 3, Sec. 34; Art. 3, Sec. 54
Massachusetts	Art. Am., Art. 18; Art. Am., Art. 62
Michigan	Art. 1, Sec. 4; Art. 4, Sec. 30; Art. 7, Sec. 26; Art. 9, Sec. 18-19
Minnesota	Art. 1, Sec. 16; Art. 4, Sec. 33; Art. 8, Sec. 2; Art. 9, Sec. 2
Mississippi	Art. 4, Sec. 66; Art. 8, Sec. 208
Missouri	Art. 1, Sec. 1; Art. 3, Sec. 39; Art. 6, Sec. 23; Art. 9, Sec. 8
Montana	Art. 11, Sec. 8
Nebraska	Art. 7, Sec. 11; Art. 13, Sec. 3
Nevada	Art. 8, Sec. 9-10; Art. 11, Sec. 10
New Hampshire	Art. 5; Art. 83

TABLE IV (Continued)

State	Citations
New Jersey	Art. 8, Sec. 2, Par. 1; Art. 8, Sec. 3, Par. 2-3; Art. 8, Sec. 4, Par. 2.
New Mexico	Art. 4, Sec. 31; Art. 9, Sec. 14; Art. 12, Sec. 3
New York	Art. 12, Sec. 5; Art. 7, Sec. 8; Art. 8, Sec. 1; Art. 11, Sec. 3
North Carolina	Art. 5, Sec. 3; Art. 7, Sec. 7; Art. 9, Sec. 4-5
North Dakota	Art. 8, Sec. 152; Art. 12, Sec. 185
Ohio	Art. 6, Sec. 2; Art. 8, Sec. 4-6
Oklahoma	Art. 2, Sec. 5; Art 10, Sec. 17
Oregon	Art. 1, Sec. 5; Art. 11, Sec. 6-9
Pennsylvania	Art. 3, Sec. 17; Art. 3, Sec. 18; Art. 9, Sec. 6-7; Art. 10, Sec. 2
Rhode Island	Art. 4, Sec. 14
South Carolina	Art. 10, Sec. 6; Art. 11, Sec. 9
South Dakota	Art. 6, Sec. 3; Art. 8, Sec. 16; Art. 13, Sec. 1
Tennessee	Art. 2, Sec. 28; Art. 2, Sec. 31; Art. 11, Sec. 12
Texas	Art. 1, Sec. 7; Art. 3, Sec. 50-52; Art. 7, Sec. 5; Art. 16, Sec. 6
Utah	Art. 1, Sec. 4; Art. 6, Sec. 31; Art. 10, Sec. 13
Virginia	Art. 4, Sec. 67; Art. 9, Sec. 141
Washington	Art. 1, Sec. 11; Art. 8, Sec. 5; Art. 8, Sec. 7
West Virginia	Art. 10, Sec. 6
Wisconsin	Art. 1, Sec. 18; Art. 8, Sec. 3
Wyoming	Art. 1, Sec. 19; Art. 3, Sec. 36; Art. 16, Sec. 6; Art. 7, Sec. 7-9

CHAPTER IV

STATE STATUTORY PROVISIONS RELATED TO NON-PUBLIC SCHOOLS

The purpose of this chapter was to record a summary of each reference to non-public schools in the statutes of the fifty states. The latest pocket supplements to the bound volumes of the statutes were utilized, therefore all citations reflect changes of record on January 1, 1964.

The statutory references to non-public schools were numerous and there was a great variety of content. The references to non-public schools in the published statutes of each state were summarized in the text and a summarization and grouping of the references to non-public schools was included in the tables at the end of the chapter.

I. STATUTORY REFERENCES TO NON-PUBLIC SCHOOLS

Alabama. The Code of Alabama, recompiled 1958, stated that the state superintendent of public instruction must develop forms to be used for monthly reports from non-public schools;[1] when a public school has been closed and consideration is given by a board to sell or lease the property, first consideration must be given to private, nonprofit educational purposes, and, if a public school is closed and the children are sent to a private nondenominational school the board of education may make payments from public education funds to the parents or to the schools involved, and if a district does operate a public school and the attendance of a particular child might precipitate the closing of that school, the board may make payments for that child at a private non-denominational school;[2] local boards of education are authorized to provide assistance to persons attending a nondenominational, private elementary or secondary school if in its opinion such assistance is warranted;[3] compulsory attendance requirements may be met at non-public schools if the teachers are certified, the branches of instruction are the same as the public school, the English language is used, and an attendance register is kept;[4] a person who does not send his child to some public or non-public school is guilty of a misdemeanor and must explain the cause of any absence;[5] all administrators of non-public schools must report their enrollments at the beginning of the school year to the proper authorities, as well as attendance reports at regular intervals, and other reports the State Superintendent of Education may require;[6] teachers in nondenominational, nonprofit private schools are included in the teacher's retirement system of Alabama and are eligible for benefits in this system;[7] the Constitution of the United States must be taught in all private schools in the state from the eighth grade through institutions of higher learning;[8] all non-public schools are required to register and report each year statistics on staff, finances, student body, and instruction, and the schools must submit all reports required by the attendance laws if attendance is to meet compulsory attendance requirements;[9] and physical education is required in all non-public schools.[10]

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[1] Code of Ala., 1958, Tit. 52, Ch. 4, Sec. 55.

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[2] Ibid., Ch. 4B, Sec. 61(16) - Sec. 61(18).

[3] Ibid., Ch. 4C, Sec. 61(20) - Sec. 61(21).

[4] Ibid., Ch. 11, Sec. 297 and Sec. 299.

[5] Ibid., Sec. 302 and Sec. 305.

[6] Ibid., Sec. 306 - Sec. 307.

[7] Ibid., Ch. 14, Sec. 362.

Alaska. The Alaska Statutes, 1962, stated that accredited schools are those schools which are equal to or above standards set up by the department of education;[11] the department must require annually, or more often if desirable, a report of necessary facts from the administrator of each educational institution;[12] weather permitting, emergency drills and instruction are required in private schools twice a month;[13] all children must attend a public school or a private school for the same length of time;[14] the administrator of a private school must report violations of compulsory attendance;[15] physical examinations are required of all children attending school;[16] teachers in private and denominational schools must be certified by the state;[17] the commissioner of education may give final examination questions for students in non-public schools and grant diplomas for non-public schools;[18] and teachers in non-public schools must submit monthly and annual attendance reports as do public school teachers.[19]

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[8] Ibid., Ch. 30, Sec. 545.

[9] Ibid., Ch. 31, Sec. 547 and Sec. 548.

[10] Ibid., Ch. 33, Sec. 555.

[11] Alaska Statutes, 1962, Tit. 14, Ch. 05, Sec. 070 - Sec. 080.

[12] Ibid., Ch. 10, Sec. 140(1).

[13] Ibid., Sec. 320.

[14] Ibid., Ch. 30, Sec. 010.

[15] Ibid., Sec. 030.

[16] Ibid., Sec. 070.

[17] Ibid., Ch. 45, Sec. 070.

Arizona. The Arizona Revised Statutes Annotated stated that the state superintendent of public instruction must in his annual report to the governor include the number of children being educated in private schools;[20] children are excused from attendance in public schools if the board of education and the county superintendent of schools are satisfied that the child is attending a regularly organized non-public school with a competent teacher and a satisfactory term;[21] and the state board of health is required to inspect premises and prescribe minimum standards for non-public schools.[22]

Arkansas. The Arkansas Statutes Annotated, 1947, specified that not less than 6 or more than 33 persons were required to incorporate an educational institution;[23] the incorporation act required that purposes of an institution be specified and funds be used for that purpose, organization of the corporation is specified, election of trustees is specified, powers of the corporation are enumerated, restriction on gifts and bequests is made, power to confer diplomas is given with incorporation, granting of diplomas without incorporation is prohibited, the charter must be filed with the state department of education, methods of changing the charter of the corporation are specified, filing fees for incorporation are determined by law, and gambling and liquor are prohibited at such institutions;[24] school boards may permit a private school to use a public school building unless the voters of the district disapprove;[25] attendance at a public or non-public school is required;[26] the state board of education may pay tuition grants for attendance of children at an accredited nonprofit, non-sectarian private school if the parent does not wish the child to attend the public school for racial reasons, the amount to be based on regular tuition charged by the private school or the public school costs;[27] it is required that authorities of private schools arrange to have displayed a United States flag during school hours;[28] it is the duty of the commissioner of education and the county superintendent of schools to see that basic instruction given in non-public schools is in the English language;[29] it is required that American history be taught in all grades, beginning in the primary grades, for at least one hour per week, the objective being to instill a love of the country and devotion to the principles of American government; graduation from high school requires a full year of American history and civics, and Arkansas history may be substituted for one year;[30] and tests and licensing are required of all those who chauffeur school buses.[31]

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[18] Ibid., Sec. 020. [19] Ibid., Sec. 030.

[20] Ariz. Rev. Stat., Tit. 15, Sec. 15-123, B.

[21] Ibid., Sec. 15-321, B. [22] Ibid., Tit. 36, Sec. 105-13.

[23] Ark. Stat., 1947, Tit. 64, Ch. 14, Sec. 1401.

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[24] Ibid., Sec. 64-1402 - Sec. 64-1414.

[25] Ibid., Tit. 80, Ch. 5, Sec. 80-518.

[26] Ibid., Ch. 15, Sec. 80-1502.

[27] Ibid., Sec. 80-1539, Sec. 80-1541, Sec. 80-1543.

[28] Ibid., Ch. 16, Sec. 80-1604.

[29] Ibid., Sec. 80-1605.

California. West's Annotated California Codes stated that credit will be given for courses in foreign languages in private schools as being equivalent to that offered in public schools;[32] it is required that regular courses of instruction be given in all private schools in the Constitution of the United States, American history, the state constitution, and California history and civics, the instruction to begin not later than the eighth grade and to continue through institutions of higher learning, these courses to be prerequisites to advanced courses in sociology, political science, economics, and foreign trade and affairs, and no student may receive a diploma until he has passed an examination in these subjects;[33] no employee of any non-public school may give out personal information on any child, unless to another school official, or others specified in the law;[34] "hazing" is forbidden, under penalty of forfeiture of scholarships and funds, at any educational institution in California;[35] every non-public school in a building with 50 or more students must have a suitable fire warning system, and a fire warning drill must be held at least once a month;[36] any fences enclosing school property must include access gates large enough to permit entrance of emergency vehicles;[37] children attending a private school taught by competent teachers, teaching branches of instruction the same as the public schools, where an attendance register is kept, are exempted from attendance at public schools;[38] the state may spend monies for the testing and identifying of outstanding students in private schools;[39] the flag must be displayed outside the administration building of every private school;[40] no common receptacle may be used in any non-public school for drinking purposes;[41] non-public schools are not subject to certain provisions of the laws applying to strictly trade and vocational schools;[42] and certain instructors in military academies may be commissioned in the regular California Cadet Corps.[43]

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[30] Ibid., Sec. 80-1613 - Sec. 80-1614.

[31] Title 80, Ch. 18, Sec. 80-1821 and Sec. 80-1823.

[32] Calif. Ed. Code, Sec. 7511.

[33] Ibid., Sec. 7901 - Sec. 7904.

[34] Ibid., Sec. 10751.

[35] Ibid., Sec. 10851 - Sec. 10353.

Colorado. The Colorado Revised Statutes, Annotated, 1953, stated that the board of all except third class districts may furnish transportation to any school when in its opinion it is required,[44] and in third class districts the board may do so if authorized by the voters;[45] every child must attend a public school unless he attends a non-public school which meets for the same term;[46] in all non-public schools the federal constitution is to be taught, not later than the seventh grade, and to continue through institutions of higher learning;[47] and if requested by the board of education of the school district in which it is located, a non-public school may be required to submit a census report not more than once a month.[48]

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[36] Ibid., Sec. 12001 - Sec. 12002. [37] Ibid., Sec. 12081.

[38] Ibid., Sec. 12151, Sec. 12154 - Sec. 12155.

[39] Ibid., Sec. 30103.

[40] Calif. Govt. Code, Sec. 431(d).

[41] Calif. Health and Safety Code, Sec. 3700.

[42] Calif. Labor Code, Sec. 1649.

[43] Calif. Military and Vet. Code, Sec. 530.

[44] Colo. Rev. Stat., 1953, Ch. 123, Sec. 123-10-43.

Connecticut. The Connecticut General Statutes Annotated, Revision of 1958, stated that non-public schools are exempt from provisions related to strictly private trade schools;[49] all non-public schools whose property is exempt from taxation must give a course of instruction in the duties and responsibilities of U.S. Citizenship in the eighth grade, including constitutional government of both state and nation, American history, biography and literature of great Americans, and the course of study to be used must be filed by the regulatory body of the school with the state department of education;[50] English is to be the medium of instruction in all schools and not more than one hour per day may be given to instruction in any other language;[51] attendance at a non-public school will meet compulsory attendance requirements only if teachers keep a record of attendance open to the state board on all matters which require reports from public school officials, except financial reports;[52] any political subdivision may provide for its children attending non-profit private schools the same transportation it provides to public school children, if approved by the eligible voters, following a petition request by 5 per cent of the voters;[53] meals sold in non-public schools are exempt from the state sales tax;[54] and the liquor commission may deny permits applied for if it is believed the proposed establishment will have a detrimental effect on a neighboring non-public school.[55]

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[45] Ibid., Sec. 123-10-44.

[46] Ibid., Sec. 123-20-1 and Sec. 123-20-16.

[47] Ibid., Sec. 123-21-8 to Sec. 123-21-9.

[48] Ibid., Sec. 123-21-14.

[49] Conn. Gen. Stat. 1958, Tit. 10, Ch. 163, Sec. 8.

[50] Ibid., Ch. 164, Sec. 18.

Delaware. The Delaware Code Annotated stated that compulsory attendance at a public school is waived if the district superintendent of schools and the state board of education are satisfied by written exams that the child is receiving regular and thorough instruction of the same type he would in schools of the state;[56] reports are required from private schools annually and monthly on attendance, age of pupils, and enrollment of pupils;[57] administrators of non-public schools must keep such records as required by the child labor laws;[58] it is required that the U.S. and Delaware Constitutions be taught not later than the eighth grade and continuing through institutions of higher learning;[59] schools must be closed on general state-wide election days;[60] by proclamation of the governor all non-public schools must observe Arbor and Bird Day;[61] and credit for services in an accredited private school is allowed for those eligible in computing benefits for state retirement benefits.[62]

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[51] *Ibid.*, Ch. 164, Sec. 17.

[52] *Ibid.*, Sec. 188.

[53] *Ibid.*, Ch. 172, Sec. 281.

[54] *Ibid.*, Ch. 219, Sec. 412(i).

[55] *Ibid.*, Ch. 545, Sec. 46.

[56] Del. Code Ann., 1953, Tit. 14, Ch. 27, Sec. 2702 - Sec. 2703.

[57] *Ibid.*, Sec. 2704.

Florida. The Florida Statutes Annotated stated that compulsory attendance requirements may be met at a non-public school;[63] attendance records and reports from non-public schools must be submitted to the state and county boards of education;[64] penalties and procedures for the compulsory attendance laws also apply to non-public schools;[65] and provisions prohibiting secret societies and fraternities in high schools do not apply to private schools.[66]

An entire chapter of the Florida Statutes was devoted to minimum

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[58] Ibid., Sec. 3506.

[59] Ibid., Ch. 41, Sec. 4104.

[60] Ibid., Sec. 4108.

[61] Ibid., Tit. 29, Ch. 21, Sec. 2108.

[62] Ibid., Ch. 55, Sec. 5530.

[63] Fla. State. Ann., Tit. 15, Ch. 232, Sec. 232.02.

[64] Ibid., Sec. 232.14 - Sec. 232.15.

[65] Ibid., Sec. 232.19.

[66] Ibid., Sec. 232.42.

standards for private schools.[67] The purposes of the act stated that the act "...is intended to facilitate and promote the acquisition of the minimum satisfactory education of all citizens of the state...." and that "No provision of the law shall apply to any school except upon request for certification of approval, which shall be on a purely voluntary basis."[68] The act also provided that an approved private school means a school of not less than 10 pupils that has received a certificate from the state board of private education, also created by the act.[69] The act is applied only to those schools requesting approval, and excluded are sectarian schools, trade schools, and limited curricula schools.[70]

The act created a state board of private education of seven members, to be appointed by the governor, four of the appointees to be engaged in private schools. The legal status, powers of the board, and duties of the board are specified in the act. Approval standards to be established by the board must be similar to public school standards. The board is required to maintain an office and employ an executive secretary and staff to carry out its responsibilities.[71]

Regular attendance at an approved private school meets requirements of Florida compulsory attendance laws if appropriate records are maintained by the school.[72]

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[67] Title 15, Education, Ch. 247, Private Schools, Minimum Standards.

[68] Ibid., Sec. 247.01.

[69] Ibid., Sec. 247.02.

[70] Ibid., Sec. 247.03 - Sec. 247.05.

[71] Ibid., Sec. 240.06 - 247.14.

Requisites for approval of a school by the state board of private education included a program of instruction of at least 180 days of actual teaching; required subjects of English, science, history, reading, writing; arithmetic, civics, humanities, and related subjects as prescribed by the state board; behavior on the part of teachers which sets an appropriate example for pupils; appropriate objectives for pupils; teachers who are appropriately certified by the state board of private education; and maintenance of appropriate health, safety, and sanitary requirements.[73]

All monies collected by the board of private education are to be deposited with the state treasurer in a fund marked as the "private education trust fund" to be disbursed as specified by law.[74]

The statutes of Florida also included a private school corporation law with detailed provisions for establishment and chartering of private educational corporations.[75]

Georgia. The Code of Georgia Annotated stated that the annual report of the state superintendent of schools must include enrollments, courses of instruction, and tuition in the various private schools of the state;[76] the various political subdivisions may lease public school

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[72] Ibid., Sec. 247.15.

[73] Ibid., Sec. 247.16 - 247.17.

[74] Ibid., Sec. 247.18 - 247.19.

[75] Ibid., Tit. 34, Corporations and Business Trusts, Ch. 623, Private School Corporations Laws, Sec. 623.01 - 623.14.

[76] Code of Ga., Ann., Tit. 32, Ch. 32, Sec. 508.

property to any bona fide private school for a maximum period of five years;[77] the state may authorize an education grant to students to attend a nonsectarian, private school anywhere in the United States in lieu of attendance at a public school;[78] attendance at some school is required;[79] and attendance officers and visiting teachers of the county may inspect the records of private schools in the district, and the administrator of the private school must provide adequate records.[80]

Hawaii. The Revised Laws of Hawaii, 1955, stated that "teacher" means any person exercising duties at any school, and the term "school" means every school except Sabbath schools;[81] certification of a principal may include as part of the requirement teaching in a private school;[82] teachers must be certified according to law to teach in any school;[83] no person afflicted with tuberculosis may teach in any private school;[84] private schools are defined as those schools not established and maintained by the department of education;[85] English is required as the medium of instruction at all schools adequate to meet compulsory attendance requirements;[86] procedures for establishment of private schools are specified in detail in order for a school to meet compulsory attendance requirements;[87] private schools are subject to supervision of the department of education, requirements for teachers are to be met, and sanitary and hygienic regulations are to be met;[88] compulsory attendance requirements may be met at a private school;[89] records of registration must be kept at all private schools;[90] and no child may be accepted into any private school without release from his previous school.[91]

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[77] Ibid., Sec. 809.

[78] Ibid., Sec. 813; Sec. 815.

[79] Ibid., Sec. 2104.

[80] Ibid., Sec. 2214.

[81] Rev. Laws of Hawaii 1955, and Third Cum. Supp. to the Rev. Laws of Hawaii 1955, Tit. 6, Ch. 38, Sec. 38-1.

[82] Ibid., Sec. 38-3.

[83] Ibid., Sec. 38-6.

[84] Ibid., Sec. 38-10.

[85] Ibid., Ch. 40, Sec. 40-1.

[86] Ibid., Sec. 40-3.

Idaho. The Idaho Code stated that the state board of education must prescribe minimum courses to be taught in all non-public schools and must prepare and issue instructional aids necessary to accomplish the purposes of the courses;[92] the state board of education must establist standards for the accreditation of non-public elementary and secondary schools, and may accredit or withhold accreditation on the basis of the standards;[93] every parent is required to send his children to a public or comparable school;[94] instruction in the constitution of the United States, use of the American flag, the pledge of allegiance, the national anthem, and "America" must be given in all schools;[95] an incorporated institution of learning may be formed by 5 or more persons in the manner provided for private corporations;[96] no religious test may be applied for admission to any incorporated educational institution;[97] and no educational incorporations will be permitted for profit purposes.[98]

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[87] Ibid., Sec. 40-6.

[88] Ibid., Sec. 40-7.

[89] Ibid., Sec. 40-9.

[90] Ibid., Sec. 40-19.

[91] Ibid., Sec. 40-20.

[92] Idaho Code, Tit. 33, Ch. 1, Sec. 118.

[93] Ibid., Sec. 119.

[94] Ibid., Ch. 2, Sec. 202.

[95] Ibid., Ch. 16, Sec. 1602.

[96] Ibid., Ch. 39, Sec. 3901.

Illinois. The Illinois Revised Statutes, 1963, stated that buses owned by non-public schools are subject to a standard $2.00 registration fee;[99] children attending non-public schools are exempted from attendance at public institutions;[100] no political subdivision may grant any payment to any school controlled by any sect or church;[101] the school board of a public school must provide transportation the same as it does to public school pupils to persons attending non-public schools if the child lives more than 1½ miles from the school he attends and the bus may operate along its regular route;[102] non-public schools are in the law granted the right to participate in community school lunch programs and funds;[103] and non-public school authorities are forbidden to employ tubercular persons.[104]

Indiana. Burns' Indiana Statutes Annotated stated that when a group of persons desire to incorporate an educational institution they must file necessary information with the clerk of circuit court; churches desiring to incorporate a school may do so by appointing trustees; provision is made for changing the name of a school, permission of associations to establish schools is granted, and the procedure for establishing an incorporated institution of learning is outlined;[105] the persons designated by the superintendent of public instruction as inspectors of schools must confer with private and parochial school authorities and advise them on improvement of the schools and standardization of instruction;[106] the state superintendent is empowered to deal with non-public school authorities in the distribution of surplus agricultural commodities;[107] every child must attend a public or other school which is taught in the English language and is open to school authorities for inspection and every school official must report those not in attendance;[108] records of attendance must be kept and are to be open for inspection by school officials;[109] temporary aid for poor children may be extended by any school corporation and the school authorities may be reimbursed by the township for such expenditures;[110] no non-public school may accept any student without a transfer from the previous school;[111] physical education classes may be prescribed by the state board for all accredited schools;[112] pupils who attend a parochial school may ride on public school buses if the routes are not changed;[113] a private school may be operated in any schoolhouse unoccupied by a public school, as long as the schoolhouse is not wanted for a public school;[114] English is required to be the medium of instruction in all non-public schools;[115] the Constitutions of the United States and of Indiana must be taught in all non-public schools;[116] in the eighth grade of every non-public school there must be a one semester course in safety education, utilizing a teacher guide prepared by the state board of education;[117] every teacher working in non-public schools must impart moral instruction and various patriotic matters;[118] and non-public schools are included in the school lunch program to enable them to receive aid.[119]

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[97] Ibid., Sec. 3909.

[98] Ibid., Sec. 3910.

[99] Ill. Rev. Stat., 1963, Ch. 95½, Sec. 3-801.7.

[100] Ibid., Ch. 122, Sec. 13-9.

[101] Ibid., Sec. 22-10.

[102] Ibid., Sec. 29-4.

[103] Ibid., Sec. 712.1 - Sec. 712.2; Sec. 712.6.

[104] Ibid., Sec. 742.

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[105] Burns' Ind. Stat., Ann., Tit. 25, Ch. 32, Ch. 3201, Sec. 3211; Sec. 3219; Sec. 3227; Sec. 3236.

[106] Ibid., Tit. 28, Ch. 3, Sec. 28-304.

[107] Ibid., Sec. 28-318.

[108] Ibid., Ch. 5, Sec. 28-505.

[109] Ibid., Sec. 28-511.

[110] Ibid., Sec. 28-512.

[111] Ibid., Sec. 28-530.

[112] Ibid., Ch. 14, Sec. 28-1409; Sec. 328-1413; Sec. 28-1414.

Iowa. The Iowa Code Annotated stated that fire drills are required in private schools once a month;[120] the state superintendent of public instruction may have control over non-public schools to the extent necessary to assure compliance with the school laws;[121] a private school is defined as any school other than a public school;[122] it is required that reading, writing, spelling, arithmetic, grammar, geography, physiology, United States history, history of Iowa, and American government be taught in all schools;[123] a suitable flag must be flown at the site of every non-public school;[124] English is to be the common medium of instruction;[125] American citizenship must be taught in all grades;[126] in every school the U.S. Constitution and the constitution of the state of Iowa must be taught beginning in the eighth grade;[127] American and Iowa history and civics must be taught in high schools for two semesters, and schools which are 4 year schools must offer a course in social problems and economics;[128] compulsory attendance requirements may be met at non-public schools;[129] the principal of a non-public school must submit to the secretary of the local school corporation once a year a certificate of names, ages, number of days in attendance of each pupil, the course of study pursued by each child, the texts used, and the names of the teachers, and also file one copy of the certificate with the county superintendent;[130] and the truant officer may place in charge of the teacher of a private school any truant without expense to the school corporation.[131]

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[113] Ibid., Ch. 28, Sec. 28-2805.

[114] Ibid., Ch. 33, Sec. 28-3306.

[115] Ibid., Ch. 34, Sec. 28-3402.

[116] Ibid., Sec. 28-3406; Sec. 28-3406a.

[117] Ibid., Sec. 28-3425 to Sec. 28-3426.

[118] Ibid., Sec. 28-3428.

[119] Ibid., Ch. 51, Sec. 28-5146.

[120] Ia. Code Ann., Tit. 5, Ch. 100, Sec. 31.

[121] Ibid., Tit. 12, Ch. 257, Sec. 257.17.

[122] Ibid., Ch. 280, Sec. 280.2.

Kansas. The General Statutes of Kansas, Annotated, 1949, stated that the state superintendent's annual report must include as much information concerning non-public schools as can be obtained;[132] pupils attending private schools approved by the state board of education if residing on a regular route of a public school bus may ride to their school at district expense;[133] in all non-public schools courses are required in history, government, citizenship, and the U.S. Constitution;[134] the doors of every non-public school building must open outward;[135] every child must be sent to a public or non-public school with competent instructors, and a comparable school term where English is the medium of instruction;[136] all nonprofit private schools are eligible to receive assistance under the school lunch program;[137] and it is required that a flag be displayed on the school grounds of every non-public school.[138]

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[123] Ibid., Sec. 280.3.

[124] Ibid., Sec. 280.4.

[125] Ibid., Sec. 280.5.

[126] Ibid., Sec. 280.6.

[127] Ibid., Sec. 280.7.

[128] Ibid., Sec. 280.8.

[129] Ibid., Ch. 299, Sec. 299.1.

[130] Ibid., Sec. 299.3.

[131] Ibid., Sec. 299.11.

Kentucky. The Kentucky Revised Statutes stated that nonprofit educational corporations are exempt from taxation;[139] the state board of education must approve rules and regulations for approval of non-public schools;[140] the superintendent of public instruction must prepare each year a list of private secondary schools in the state and show the classification of each;[141] public school officials may not sell textbooks to private or sectarian schools;[142] non-public schools must be taught in English, the general branches of study taught in the public schools must be taught there, and the term must be as long as the term in public schools;[143] certain school districts may contract with approved private schools to provide commercial instruction;[144] a child completing a course of study certified by teachers in an approved private elementary school is entitled to admission to any public high school;[145] children attending any school in compliance with compulsory school laws may be transported and paid for by county general funds if there are no sidewalks and if they do not live a reasonable walking distance from the school they attend;[146] children who attend an approved non-public regular day school are exempted from compulsory attendance at a public school;[147] attendance and scholarship reports must be kept and submitted by private school authorities in registers provided by the state board of education;[148] the authority in charge of a non-public school must submit enrollment data to the superintendent of the district in which the school is located;[149]

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[132] Gen. Stat. Kan., Ann., 1949, Corrick, Supp. Gen. Stat. of Kan. Ann., 1961, Corrick, Ch. 72, Art. 1, Sec. 72-123.

[133] Ibid., Art. 6, Sec. 72-619. [134] Ibid., Art. 11, Sec. 1103.

[135] Ibid., Art. 45, Sec. 72-4601 - Sec. 72-4605.

[136] Ibid., Art. 48, Sec. 72-4801.

[137] Ibid., Art. 53, Sec. 72-5327.

[138] Ch. 353, Sec. 2, Laws of Kan., 1961.

[139] Ky. Rev. Stat., Tit. 11, Ch. 141, Sec. 040.

[140] Ibid., Tit. 13, Ch. 156, Sec. 156.160 (8).

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[141] Ibid., Sec. 156.230(1). [142] Ibid., Ch. 157.170.

[143] Ibid., Ch. 158, Sec. 158.080.

[144] Ibid., Sec. 158.100(4). [145] Ibid., Sec. 158.140.

[146] Ibid., Ch. 158, Sec. 158.115.

[147] Ibid., Ch. 159, Sec. 159.030(b).

[148] Ibid., Sec. 159.040.

[149] Ibid., Sec. 159.160.

a prohibition is made against allowing animals to run on private educational property;[150] and religious educational corporations are not allowed to hold more than fifty acres of land for more than one year.[151]

Louisiana. West's Louisiana Statutes Annotated, Revised Statutes, stated that public school authorities are not permitted to enter into any agreements with sectarian private schools to operate schools cooperatively;[152] parish school boards may provide transportation for children attending any school approved by the state board of education, if the children live 1 mile or more from school;[153] it is required that visiting teachers of the parish have access to attendance reports and records of all non-public schools;[154] severance taxes of the state are to be devoted to providing free of cost school books and school supplies to all children;[155] the state board of education is given the authority to approve private schools whose curriculum is equal to that of public schools, and the certificates of such schools are equal to the certificates of the public schools;[156] the Educational Cooperative Law of state was enacted to permit non-profit educational corporations to be properly organized to conduct private schools or educational facilities, various requirements were enumerated, including a prohibition of employing personnel at more or less than any minimum salary schedule adopted by the legislature;[157] and the Louisiana Financial Assistance Commission was organized to provide financial assistance from public funds to those who choose schooling in private non-sectarian schools, with powers to receive money and provide assistance to parents or guardians who apply, and by law provided for an appropriation of $200,000.00 per month.[158]

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[150] Ibid., Tit. 21, Ch. 259, Sec. 259.200.

[151] Ibid., Tit. 23, Ch. 273, Sec. 010.990.

[152] La. Stat. Ann., Rev. Stat., Tit. 17, Ch. 1, Sec. 153.

[153] Ibid., Sec. 158.

[154] Ibid., Sec. 229.

[155] Ibid., Sec. 351 - Sec. 352.

[156] Ibid., Ch. 2, Sec. 2.

Maine. The Revised Statutes of the State of Maine, 1954, stated that all non-public schools incorporated as non-stock institutes and all meals sold in non-public schools are exempt from taxation;[159] the duties of the commissioner of education include prescribing and/or approving studies taught in private schools that are approved for attendance and tuition purposes, English is to be the language of instruction, American history and civics are to be taught in elementary and secondary schools and are required for graduation from elementary school, and geography of the state must be taught in at least one grade between grades 7 to 12;[160] a chest x-ray certificate must be on file in the office of every private school for each employee, and must be renewed annually;[161] compulsory attendance at a public school is not required if the child attends a private school approved by the commissioner for an equivalent period of time, and an attendance certificate is filed with the school officials of the town;[162] secondary schools are to be evaluated for basic approval and possibly accreditation, the basic approval for attendance and tuition purposes to require a course of study approved by the commissioner of education, a minimum schedule of 200 minutes per week for each period, a minimum of 180 legal school days, one or more certified teachers for each two grades, a pupil-teacher ratio of not more than 30 to 1, proper and safe facilities, at least two consecutive grades, a graduation requirement of 16 Carnegie units included four in English and one in American history, and all schools are to be inspected for evaluation and accreditation purposes;[163] if an administrative unit does not maintain an approved secondary school it may contract with trustees of any academy located within the area for the instruction of pupils according to Sec. 98;[164] any pupil is entitled to have tuition paid for him if the cost does not exceed 125 per cent of the average cost per pupil in the state and board may be paid for the student, but payment may not exceed $353.00;[165] the trustees of an academy or educational corporation may surrender any property to the trustees of any political subdivision for the purpose of turning the academy into a free high school;[166] an "academy" is defined to include seminaries and institutes, and may be approved by the commissioner as a secondary school, if required reports are submitted;[167] the state board of education may regulate tuition charges, accounting, and municipal relations for tuition purposes, and the commissioner or state auditor may initiate audits of financial accounts;[168] the teachers of all non-public schools must make an effort to inculcate principles of morality, patriotism, and truth in their pupils;[169] and an educational corporation without capital stock may hold property in any amount for the achievement of its purposes.[170]

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[157] Ibid., Ch. 15, Sec. 2801 - Sec. 2831.

[158] Ibid., Ch. 18, Sec. 2951 - Sec. 2959.

[159] Rev. Stat. Me., 1954, Ch. 17, Sec. 10, VI, XVI.

[160] Ibid., Ch. 41, Sec. 11, VII.

[161] Ibid., Ch. 41, Sec. 55.

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[162] Ibid., Sec. 92.

[163] Ibid., Sec. 98 and Sec. 100.

[164] Ibid., Sec. 105.

[165] Ibid., Sec. 107 - Sec. 108.

[166] Ibid., Sec. 122 - Sec. 124.

Maryland. The Annotated Code of the Public General Laws of Maryland, 1957, stated that a non-public school may not issue a certificate or diploma without the consent and approval of the state board of education;[171] when any non-public school ceases to operate, the academic records of students for the previous 25 years must be turned over to the department of education;[172] the state superintendent of schools must issue a certificate of approval to any non-public school which meets the established standards, if the school remains open for inspection and required records and reports are submitted;[173] the state superintendent is authorized to issue rules and regulations for non-public schools;[174] the state board of education must provide for general distribution among private schools copies of the prescribed course of studies for public schools;[175] the state board of education must require private schools to submit enrollment data and course of study information each year;[176] alcoholic beverages and narcotics must be studied in all schools receiving any public funds;[177] once a week the exercises of every non-public school must be opened with the singing of the "Star Spangled Banner";[178] a child is exempt from compulsory attendance requirements at a public school if he attends a non-public school with a similar course of study for a similar period of time;[179] the administrator of every non-public school must report unlawful absences to the appropriate public school officials;[180] and all schools supported in part by public funds must provide prescribed physical education.[181]

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[167] Ibid., Sec. 125.

[168] Ibid., Sec. 126 - Sec. 128.

[169] Ibid., Sec. 144.

[170] Ibid., Ch. 54, Sec. 5.

[171] Ann. Code Md., 1957, Art. 77, Ch. 3, Sec. 24.

[172] Ibid., Sec. 25(a).

[173] Ibid., Sec. 25(b) - Sec. 25(c).

One chapter of the Maryland Statutes[182] regulated solicitation of students to enroll in any course of instruction in non-public schools. Exempted from the provisions of the chapter are accredited or approved schools, and schools operated by church groups.[183]

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[174] _Ibid_., Sec. 25(d).

[175] _Ibid_., Sec. 26.

[176] _Ibid_., Sec. 31.

[177] _Ibid_., Ch. 7, Sec. 90.

[178] _Ibid_., Sec. 98.

[179] _Ibid_., Ch. 23, Sec. 223(a).

[180] _Ibid_., Sec. 233.

[181] _Ibid_., Ch. 29, Sec. 289 - Sec. 290.

[182] Art. 77, Education, Ch. 32, Nonpublic Schools, Sec. 305 - Sec. 309.

Massachusetts. The Massachusetts General Laws Annotated stated that the trustees of educational institutions must submit annually to the department of education information related to pupils, teachers, tuition, courses of study, and the general condition of the school;[184] the state treasurer must reimburse town treasuries for transportation expenses stipulated by law for transportation of pupils to non-public schools, as well as public schools;[185] an oath or affirmation of loyalty is required of teachers who teach in non-public schools;[186] the administration of every non-public school must file with the department of public health a certificate that every employee is examined every three years for communicable tuberculosis;[187] the commissioner of education is required to furnish forms and registers to private schools to enable them to submit information to the department;[188] school attendance at a private or religious school may meet compulsory school attendance laws if the studies are in English, and are equal to the public school instruction, and to protect children they may not be deprived of transportation to the school of their choice;[189] school officials must provide pupils leaving with a prescribed transfer card and also send a copy to the superintendent of schools in the town in which the student is going;[190] the administrator of any private school is required to furnish to the courts any information requested by the courts concerning any child under supervision of the court;[191] the state may finance scientific investigations concerned with various mental diseases in cooperating private schools;[192] fire exits are to meet state standards in any school;[193] fire drills are to be required and regulated in private schools;[194] rates of fare for street and elevated railways are to be one-half the regular rate for school pupils, including those from non-public schools;[195] and the school savings plan organized by the commissioner may include private schools.[196]

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[183] Ibid., Sec. 305(c).

[184] Mass. Gen. Laws Ann., Tit. 12, Ch. 69, Sec. 4.

[185] Ibid., Ch. 71, Sec. 7A. [186] Ibid., Sec. 30A.

[187] Ibid., Sec. 55B.

[188] Ibid., Ch. 72, Sec. 1 and Sec. 2.

[189] Ibid., Ch. 76, Sec. 1.

Michigan. The Michigan Statutes Annotated stated that driver education courses in the public high schools must be open to pupils enrolled in non-public schools in the district and state monies may be apportioned to the district for these non-public school pupils;[197] the superintendent of public instruction is given supervision over all non-public schools as provided by law, the intent of the law being that the courses of study and the qualifications of the teachers be the same standard as provided for public schools in the laws of the state;[198] a private, denominational, or parochial school is defined as any school not under the exclusive supervision and control of the state;[198A] teachers teaching in non-public schools must be certified by the state;[199] the superintendent of public instruction must file a complaint against the authorities of any non-public school for violation of any laws applying to non-public schools, and compel the authorities to comply with the law, subject to a hearing, or children attending such a school will be in violation of compulsory attendance laws unless they attend another approved public or non-public school;[200] the superintendent of public instruction or his agents may inspect any school operating under the laws;[201] no law is construed to permit any non-public school to participate in the distribution of the primary school fund;[202] a civics course is required for graduation from any Michigan high school;[203] construction regulations and requirements are applied to non-public schools and inspection by the state fire marshal is permitted;[204] the superintendent of public instruction must include in his annual report general statements about general educational conditions in the state and all incorporated institutions of learning;[205] any institution ceasing to function must turn over the academic records of all students to the superintendent of public instruction;[206] all instruction must be in English except religious instruction in addition to the regular course of study, or in high school — language classes;[207] in all non-public schools there must be included instruction in Constitutions of the state and federal government, history of the United States and Michigan, and the government of other political subdivisions of Michigan, to begin not later than the ninth grade;[208] no monies from the primary school interest fund may be used to support any sectarian school, except transportation of pupils to such schools may be provided;[209] every child must be vaccinated and immunized unless exempted by a signed statement;[210] children attending non-public schools are entitled to the same transportation benefits as those attending public schools;[211] disputes arising about walking distances, routes, and number of vehicles with public school officials and non-public school patrons may be amended or reviewed by the superintendent of public instruction;[212] any child attending a comparable non-public school is exempted from compulsory attendance at a public school;[213] it is the duty of administrators of non-public schools to submit to the superintendent of the district or the county superintendent of schools enrollment and attendance data;[214] and educational corporations are controlled by the state in regard to incorporation, charters, necessity of statements of purpose, powers of trustees, granting of diplomas, right of inspection by the superintendent of public instruction, and submission of an annual report.[215]

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[190] Ibid., Sec. 13.

[191] Ibid., Tit. 17, Ch. 119, Sec. 69.

[192] Ibid., Ch. 123, Sec. 11 and Sec. 13A.

[193] Ibid., Tit. 20, Ch. 143, Sec. 15.

[194] Ibid., Ch. 148, Sec. 28(J).

[195] Ibid., Tit. 22, Ch. 161, Sec. 108.

[196] Ibid., Ch. 167, Sec. 24.

[197] Mich. Stat. Ann., Sec. 9.2511.

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[198] Ibid., Sec. 15.1921.

[198A] Ibid., Sec. 15.1922.

[199] Ibid., Sec. 15.1923.

[200] Ibid., Sec. 15.1924.

[201] Ibid., Sec. 15.1925.

[202] Ibid., Sec. 15.1927.

[203] Ibid., Sec. 15.1951.

[204] Ibid., Sec. 15.1961; Sec. 15.1963; Sec. 15.1966.

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[205] *Ibid.*, Sec. 15.3252.

[206] *Ibid.*, Sec. 15.3267.

[207] *Ibid.*, Sec. 15.3360.

[208] *Ibid.*, Sec. 15.3361 - Sec. 15.3362.

[209] *Ibid.*, Sec. 15.3366.

[210] *Ibid.*, Sec. 15.3376.

[211] *Ibid.*, Sec. 15.3590 and Sec. 15.3592.

[212] *Ibid.*, Sec. 15.3600.

[213] *Ibid.*, Sec. 15.3731 - Sec. 15.3732.

Minnesota. The Minnesota Statutes Annotated, stated that every child must attend a public or private school;[216] compulsory attendance requirements may be met at a school in which teachers maintain the same minimum standards as public school teachers and English is the medium of instruction;[217] the same reports are required of private schools as are required of public schools;[218] if requested the state board of education may provide uniform examinations for non-public high schools, and the county superintendent of schools may also conduct examinations for private schools;[219] in the eighth grade and high schools the Constitution of the United States and the Declaration of Independence must be taught;[220] safety patrols may be organized for non-public schools;[221] and any non-public school official not complying with the provisions of compulsory attendance law is guilty of a misdemeanor.[222]

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[214] Ibid., Sec. 15.3738.

[215] Ibid., Sec. 21.170 - Sec. 21.178.

[216] Minn. Stat. Ann., Ch. 120, Sec. 10, Subd. 1.

[217] Ibid., Subd. 2.

[218] Ibid., Sec. 12, Subd. 2.

[219] Ibid., Ch. 121, Sec. 11, Subd. 9 and 10.

[220] Ibid., Ch. 126, Sec. 06.

[221] Ibid., Sec. 15, Subd. 1.

Mississippi. The Mississippi Code, 1942, Annotated, Recompiled stated that the right of eminent domain exercised by certain authorities may not be used to condemn the property of any non-public school;[223] any religious society may own property for school purposes;[224] free uniform textbooks may be loaned to pupils attending any school;[225] schools in which pupils receive free textbooks must submit to the county superintendent of instruction a report of such facts as are requested;[226] suitable fire exits are required at all schools, and plans for construction must be approved by the county superintendent;[227] and all property used for non-profit school purposes is exempt from taxation.[228]

Missouri. Vernon's Annotated Missouri Statutes stated that there must be given in all private schools in the state regular courses of instruction in the Constitutions of the United States and the state, and American history, to begin not later than the seventh grade and to continue through institutions of higher learning, and no pupil may receive a certificate of graduation unless he has passed an examination in such, and the state commissioner must provide a list of suitable textbooks to carry out the provisions of the act,[229] every child must attend a public or a non-public school;[230] transportation must be provided, if it is provided for public school pupils, for non-public school pupils who attend a non-profit private school;[231] and no person may receive a teaching certificate if he has not completed an approved high school course at a public or non-public school.[232]

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[222] Ibid., Ch. 127, Sec. 19.

[223] Miss. Code Ann., 1942, Tit. 12, Ch. 3, Sec. 2781.

[224] Ibid., Tit. 21, Ch. 4, Sec. 5351(e).

[225] Ibid., Tit. 24, Ch. 5, Sec. 6646 and Sec. 6656.

[226] Ibid., Sec. 6658.02.

[227] Ibid., Tit. 25, Ch. 5, Sec. 7008; Sec. 7009; Sec. 7010.

[228] Ibid., Tit. 39, Ch. 1, Sec. 9697(d).

Montana. The Revised Codes of Montana Annotated, 1947, stated that all teachers must give instruction in the dangers of fire and the prevention of fire not less than ten minutes per week, fire drills must be held at least once a month, and suitable fire detection and warning devices must be installed;[233] the superintendent of public instruction must include in his annual report, as much as can be determined, the financial and educational condition of the non-public schools in the state;[234] each month the school authorities of every non-public school must submit attendance information to the clerk of the district school board, and every child must be in attendance at a public or non-public school where the common branches are taught in English;[235] any child may obtain from the clerk of the school district a permit to ride the public school bus, if the proportionate cost of the transportation is paid;[236] and schools which are tax exempt may participate in the state agency for surplus property.[237]

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[229] Ann. Mo. Stat., Tit. 11, Ch. 163, Sec. 163.200 - Sec. 163.240.

[230] Ibid., Ch. 164, Sec. 164.010.

[231] Ibid., Ch. 165, Sec. 165.140.

[232] Ibid., Ch. 168, Sec. 168.050.

[233] Rev. Code Mont., 1947, Tit. 75, Ch. 23, Sec. 75-2301 - Sec. 75-2302.

[234] Ibid., Ch. 13, Sec. 75-1309(c).

Nebraska. The Revised Statutes of Nebraska, 1943, stated that every child must attend a public school or a non-public school each day the public schools are open;[238] all teachers in non-public schools must keep a complete record of attendance and submit an annual attendance report to the county superintendent of schools;[239] in all grades below the sixth grade one hour per week must be given to exercises and teaching of stories of American heroes and history, patriotic songs, the memorization of the national anthem and patriotic hymns, and development of reverence for the flag and its use;[240] from the fifth to the eighth grade at least three periods a week must be devoted to teaching of American history from approved textbooks in an interesting manner to develop love of the country;[241] in high school, in at least two grades, civics classes must be taught which include state and federal constitutions, the duties of citizenship, the benefits of our form of government, and the dangers and fallacies of other ideologies;[242] appropriate patriotic exercises must be held on special holidays;[243] all teachers must teach in such a way that they promote high character and morality, and it is the duty of the superintendent of public instruction to outline a course of study to promote character education and include it in the regular course of study for Nebraska schools;[244] the superintendent of a public high school may certify that a non-public school graduate may be excused from an entrance examination, if the pupil demonstrates satisfactory achievement;[245] State Fire Day must be observed in all non-public schools;[246] every teacher must devote at least 30 minutes each school month to instruction in fire dangers and methods of fire prevention;[247] teachers in non-public schools must obtain a teaching certificate;[248] the general laws of the state regarding pupils, grades, and qualifications are applied to non-public schools, all non-public schools are required to have adequate supplies, and a course of study similar to that of a public school;[249] teachers must have certificates equivalent to those held by public school teachers;[250] nothing in the general laws is construed to interfere with religious teachings in non-public schools, and the governing board of a non-public school has general control of the school;[251] the county superintendent of schools is required to inspect all non-public schools at least twice a year and report any subversive activity or noncompliance with general law;[252] if a non-public school does not conform to general laws no certified teacher may teach there and attendance in these schools under compulsory education requirements will not be valid;[253] and the state department of education must establish standards for accrediting both public and non-public schools.[254]

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[235] Ibid., Ch. 29, Sec. 75-2901; Sec. 75-2904.

[236] Ibid., Ch. 34, Sec. 75-3408.

[237] Ibid., Tit. 82, Ch. 31, Sec. 82-3101.

[238] Rev. Stat. Neb., 1943, Ch. 79, Art. 2, Sec. 79-201.

[239] Ibid., Sec. 79-207.

[240] Ibid., Sec. 79-213(2).

[241] Ibid., Sec. 79-213(3).

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[242] Ibid., Sec. 79-213(4). [243] Ibid., Sec. 79-213(5).

[244] Ibid., Sec. 79-214 and Sec. 79-215.

[245] Ibid., Art. 4, Sec. 79-497. [246] Ibid., Art. 4, Sec. 79-4, 122.

[247] Ibid., Sec. 79-4, 123.

[248] Ibid., Art. 12, Sec. 79-1201; Sec. 79-1233; Sec. 79-1267.

[249] Ibid., Art. 17, Sec. 79-1701. [250] Ibid., Sec. 79-1702.

Nevada. The Nevada Revised Statutes stated that children are exempted from public school attendance when satisfactory written evidence is presented to the district that the child is receiving equivalent instruction elsewhere, but no child may be given a diploma without having passed an examination upon the constitution;[255] any teacher who must teach the constitutions in any school must show by examination or credential that he possesses sufficient knowledge to do so;[256] a school is defined as any educational institution or class maintained to offer instruction to 5 or more students at the same time, or 25 or more students during a calendar year, designed to educate an individual generally or specifically;[257] exempted from the general licensing act for private schools are those schools with religious affiliations and others with limited curricula;[258] all private schools must use the regularly prescribed state courses of study or another course of study approved by the state board, and general reports are to be required periodically;[259] English is the required medium of instruction;[260] instruction in the United States and the Nevada Constitutions is to be given in all private schools;[261] fire drills are required in private schools at least twice a month;[262] trespassing, defacing, or disturbing private school property is unlawful;[263] regulations applying to public school buses are also applied to private school buses;[264] free tuition is extended to full-time private school teachers at the University of Nevada and Nevada Southern in the same manner as it is made available to public school teachers;[265] nonprofit private schools are made eligible to receive goods from the director of the federal surplus agency;[266] children in the Nevada Children's Home are permitted to attend non-public schools if there is no expense to the state involved;[267] all schools are exempted from boxing and wrestling laws if the participant is a student;[268] and common carriers are allowed to reduce rates to nothing for officials, teachers, and pupils from non-public schools.[269]

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[251] Ibid., Sec. 79-1703; Sec. 79-1704.

[252] Ibid., Sec. 79-1705.

[253] Ibid., Sec. 79-1706 to Sec. 79-1707.

[254] Ibid., Sec. 79-1247.02.

[255] Nev. Rev. Stat., Tit. 34, Ch. 392, Sec. 0409 and Sec. 070.

[256] Ibid., Sec. 160.

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[257] Ibid., Ch. 394, Sec. 010.

[258] Ibid., Sec. 010 to Sec. 120.

[259] Ibid., Sec. 130.

[260] Ibid., Sec. 140.

[261] Ibid., Sec. 150.

[262] Ibid., Sec. 170.

[263] Ibid., Sec. 180.

[264] Ibid., Sec. 190.

[265] Ibid., Ch. 396, Sec. 540.

[266] Ibid., Ch. 333, Sec. 490.

[267] Ibid., Ch. 423, Sec. 220.

New Hampshire. The New Hampshire Revised Statutes Annotated, 1955, stated that in all private schools regular courses of instruction must be given in the Constitutions of the United States and the state, and the Declaration of Independence;[270] the state board and the commissioner of education must examine all contracts made with institutions to promote the cause of edcuation, and must designate private schools which are approved;[271] pupils attending approved private schools are entitled to the same privileges of transportation as are students in the public schools;[272] officers of a non-public school are required to display properly a United States flag;[273] English is required as a language, except that devotional exercises in a private school may be conducted in another language;[274] all persons who have charge of instruction in private schools must file reports with the state board of health;[275] it is required that private schools be represented on the State Council for Teacher Education;[276] no teacher in any approved private school may advocate subversive doctrines;[277] every child must be sent to a public school or an approved private school for the same length of time;[278] English is required for instruction and all the common branches of study are specified as necessary;[279] a school district may under certain conditions, when deemed necessary, enter into contracts with an academy, high school, or literary institution for instruction and transportation, and may appropriate money to carry the contract into effect, subject to the approval of the state board, and if the contract is approved by the state board the high school may be considered a high school maintained by the district;[280] all non-public schools are to be furnished copies of the state school register and must make an annual statistical report to the state board;[281] children attending a private school must have a vaccination;[282] and political subdivisions may adopt a health and sanitation provision which entitles them to assign to each private school a school physician to examine every child, teacher, employee, and the school facilities and grounds for health or safety hazards, and report conditions to parents, school boards, and the proper authorities.[283]

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[268] *Ibid.*, Tit. 41, Ch. 467, Sec. 170.

[269] *Ibid.*, Tit. 58, Ch. 704, Sec. 140.

[270] N.H. Rev. Stat. Ann. 1955, Tit. 15, Ch. 189, Sec. 189:10.

[271] *Ibid.*, Ch. 186, Sec. 186:11, XVII, XIX.

[272] *Ibid.*, Ch. 189, Sec. 189:9.

[273] *Ibid.*, Sec. 189:17.

[274] *Ibid.*, Sec. 189:20 - Sec. 189:21.

[275] *Ibid.*, Sec. 189:33.

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[276] Ibid., Ch. 190, Sec. 190:1. [277] Ibid., Ch. 191, Sec. 191:1.

[278] Ibid., Ch. 193, Sec. 193:1 - Sec. 193:2.

[279] Ibid., Ch. 189, Sec. 189:19.

[280] Ibid., Ch. 194, Sec. 194:22; Sec. 194:23a - Sec. 194:23d.

[281] Ibid., Sec. 194:31. [282] Ibid., Ch. 200, Sec. 200-1.

[283] Ibid., Sec. 200:15 - Sec. 200:24.

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New Jersey. The New Jersey Statutes Annotated stated that no priate school may be incorporated for profit, and the incorporation is controlled by the general incorporation law for institutions of learning, corporations, and associations not for profit;[284] religious, charitable, educational, and benevolent corporations are regulated in financial transactions, activities of trustees, and dissolution;[285] church related schools are somewhat regulated by church corporate activities;[286] it is required that the administrator of every non-public school submit to the commissioner of education annually a report of information and statistics, except no financial information may be required, and the commissioner may not make public any such information collected;[287] children attending non-public schools are entitled to the same transportation benefits as are given to public school children, if they attend a nonprofit school;[288] children are required to attend the public school or an equivalent school for an equal period of time;[289] corporal punishment is prohibited in private schools;[290] instruction in fire prevention must be provided not less than one hour per month;[291] a private school is defined as a school at which compulsory education requirements can be met;[292] regular courses of instruction in the Constitution of the United States must be given in all private schools beginning not later than the seventh grade;[293] nonsectarian private boarding schools are required to register for a certificate of approval from the state commissioner of education, the county superintendent of schools must examine the facilities, and the schools must furnish information and reports as required by the commissioner;[294] and zoning requirements may not discriminate between private non-profit schools and public schools.[295]

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[284] N.J. Stat. Ann., Tit. 15, Ch. 11, Sec. 15:11-1 to Sec. 15:11-20.

[285] *Ibid.*, Ch. 14, Sec. 15:14-1 to Sec. 15:14-11.

[286] *Ibid.*, Tit. 16, Ch. 1 to 19, Sec. 16:1-1 to Sec. 16:19-9.

[287] *Ibid.*, Tit. 18, Ch. 3, Sec. 18:3-18.

[288] *Ibid.*, Ch. 14, Sec. 18:14-8.

[289] *Ibid.*, Ch. 14, Sec. 18:14-14.

[290] *Ibid.*, Ch. 19:19-1.

[291] *Ibid.*, Sec. 18:19-3; Sec. 18:19-5; Sec. 18:19-6.

New Mexico. The New Mexico Statutes Annotated, 1953, stated that the state board of education is given permission, if the legislature provides the money, to create a textbook fund to furnish at cost to non-public schools approved textbooks, to require reports from non-public schools, and to set up standards for such schools;[296] the state superintendent of public instruction must prepare a biennial report of public and non-public schools in the state;[297] the county superintendent must submit annually a list of the number and names of the non-public schools in the county;[298] the county may provide from general funds for the transportation of any child attending any school in compliance with compulsory attendance laws;[299] teachers may not be employed if they have communicable diseases;[300] children must attend a public or a non-public school approved by the state board, and administrators of non-public schools must report absences monthly to the city or county superintendent of schools;[301] and at the end of each year the administrator of a non-public school must inventory state textbooks on hand and estimate needs for the following year.[302]

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[292] *Ibid.*, Sec. 18:19-7. [293] *Ibid.*, Sec. 18:19-8; Sec. 18:19-9.

[294] *Ibid.*, Ch. 20, Sec. 18:20-25 to Sec. 18:20-30.

[295] *Ibid.*, Tit. 40, Ch. 55, Sec. 55:33-1.

[296] N.M. Stat. Ann., 1953, Ch. 73, Art. 1, Sec. 73-1-7.

[297] *Ibid.*, Ch. 73, Art. 2, Sec. 73-2-1.

[298] *Ibid.*, Ch. 73, Art. 5, Sec. 73-5-4.

New York. McKinney's Consolidated Laws of New York stated that the board of regents may incorporate any non-public educational institution, and such institution may not be incorporated under any other general law without the regents' consent;[303] the regents may grant a provisional charter to any institution if there is promise that conditions for an absolute charter will be met;[304] courses of instruction in patriotism, citizenship, and basic historic documents are required in all non-public schools if the instruction there is to be considered equivalent to the instruction in public schools;[305] instruction in physical training is necessary for a school to be considered the same instruction as a public school;[306] instruction regarding narcotics and the effects of habit forming drugs is required in all schools;[307] traffic regulations and safety regulations must be taught in all schools;[308] fire drills are required in every private school, the administrator of private schools must have the premises inspected at least once a year, and instruction in fire prevention must be given at least 15 minutes each week;[309] health and welfare services provided to children by the voters and school district are also to be provided to children who attend other than a public school;[310] the board of education of a union free school district may contract with an academy for instruction, or adopt the academy as the academic department of a union free school;[311] the voters of a district have the power to provide by public taxation or other means for the transportation of children to any school;[312] teachers in every institution that is exempt from taxation are required to swear (or affirm) to support the Federal and state constitutions;[313] a child may meet compulsory attendance requirements at a public school or elsewhere if the instruction is equivalent to instruction given in a public school by a competent teacher; the course of study must include the 12 common branches of instruction, including American history, and may provide a course in Communism and its methods and its destructive effects, and

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[299] Ibid., Ch. 73, Art. 7, Sec. 73-7-36.

[300] Ibid., Art. 12, Sec. 73-12-11.

[301] Ibid., Art. 13, Sec. 73-13-3.

[302] Ibid., Art. 18, Sec. 73-18-11.

[303] N.Y. Ed. Law, Sec. 216.

[304] Ibid., Sec. 217.

[305] Ibid., Sec. 801.

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[306] *Ibid.*, Sec. 803. [307] *Ibid.*, Sec. 804-a.

[308] *Ibid.*, Sec. 806.

[309] *Ibid.*, Sec. 807; Sec. 807-a; Sec. 808.

[310] *Ibid.*, Sec. 912. [311] *Ibid.*, Sec. 1714.

[312] *Ibid.*, Sec. 2021, 19. [313] *Ibid.*, Sec. 3002.

190 legal school days are required each year;[314] public welfare officials must provide clothing, books, food, and other necessities so indigent children can attend a non-public school;[315] a child must attend a public school for the required length of time each day and year, or attend some other school;[316] all schools, except public schools or those maintained by a religious group, must register and purchase a certificate of registration from the commissioner of education;[317] every teacher must keep an accurate record of attendance and absences which must be open for inspection to any authorized attendance officer, and the person in charge of a school must notify the authorities of any transfer or unlawful absences;[318] sufficient transportation facilities are to be provided by the school district for all children to and from the school they legally attend, except in case of a child attending a parochial school transportation may be provided only to the nearest school of his denomination;[319] and any religious corporation may acquire property for auxiliary use as a school.[320]

North Carolina. The General Statutes of North Carolina stated that every child must attend a public school, or a private nonsectarian school, or a non-public school which keeps records, maintains curriculum requirements, and has the same term as a public school;[321] it is the responsibility of the state board of education to supervise and regulate non-public schools to protect the rights of citizens to educate their children there, but the board may not interfere with any religious instruction; the course of study must be in English and correspond with the courses of study in the public schools;[322] teachers must possess the same certificates they would need to teach in a comparable position in the public schools;[323] attendance information and enrollment data must be provided by the operators of a non-public school;[324] to encourage the benefits of education to children of any race the state makes available expense grants for private education to any child who applies, for attendance at a non-sectarian private school, the amount to not exceed the cost of the private education, but which may be equal to the per-day, per-student amount expended for public schools the previous year;[325] expense grants are to be approved if the child is enrolled in a private, approved non-sectarian school, payment to be made to the school and the parent jointly when the child is properly certified in attendance, except payments may not be made to schools not on the approved list of the state board, and payments do not vest any additional authority for supervision and regulation of the school with any state agencies;[326] political subdivisions other than the state are also given permission to give expense grants to augment state grants;[327] every child must be immunized against diptheria, tetanus, whooping cough, and small pox before attending any non-public school, and the principal of a non-public school may not accept any child unless evidence is presented that he has been properly immunized;[328] and all institutions, whether public or non-public may be regulated in sanitation matters by the state board of health.[329]

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[314] Ibid., Sec. 3204.

[315] Ibid., Sec. 3209.

[316] Ibid., Sec. 3210, 1 to 2d.

[317] Ibid., Sec. 3210 (2e).

[318] Ibid., Sec. 3211.

[319] Ibid., Sec. 3635.

[320] N.Y. Religious Corp. Law, Sec. 6.

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[321] Gen. Stat. N.C., Ch. 115, Sec. 115-166.

[322] Ibid., Sec. 115-255. [323] Ibid., Sec. 115-256.

[324] Ibid., Sec. 115-257.

[325] Ibid., Sec. 115-274 to Sec. 115-276.

[326] Ibid., Sec. 115-278(3); Sec. 115-282; Sec. 115-285.

North Dakota. The North Dakota Century Code Annotated stated that the superintendent of public instruction must include in his biennial report to the governor information regarding the condition, educational and financial, of private schools and academies, as much as can be determined;[330] a child may be exempted from attendance at a public school if he attends a non-public school approved by the county superintendent of schools wherein the common branches of instruction of the public schools are taught;[331] transportation to a parochial school may not be furnished;[332] and study of the Constitution of the United States must be taught, beginning not later than the opening of the eighth grade.[333]

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[327] Ibid., Sec. 115-286; Sec. 115-287; Sec. 115-289; Sec. 115-292; Sec. 115-295.

[328] Ibid., Ch. 130, Sec. 130-87; Sec. 130-91; Sec. 130-92.

[329] Ibid., Sec. 130-170.

[330] N.D. Cent. Code Ann., Ch. 15-21, Sec. 15-21-14,3.

[331] Ibid., Ch. 15-34, Sec. 15-34-03(1).

[332] Ibid., Sec. 15-34-07.

[333] Ibid., Ch. 15-38, Sec. 15-38-08.

Ohio. Page's Ohio Revised Code Annotated stated that the state board of education must prescribe minimum standards for all schools of the state in all areas of concern, except that formulation of standards for non-tax supported schools must consider the needs and objectives of the schools, provided that they do not conflict with the provision of a general education of a high quality;[334] standards of the revised code apply to certification of teachers in non-tax supported schools;[335] an annual report is required from all non-public schools on forms provided by the state board;[336] no established center for care of persons with communicable diseases or the mentally ill may be located within 2000 feet of any school;[337] all non-public schools must appropriately display the national flag;[338] scholarships for teacher trainees at Ohio institutions of higher learning are available to non-public school graduates;[339] every child must attend a school for the length of term of the public schools of the district, and the school must conform to the minimum standards of the state board;[340] the administration of any non-public school must report to the clerk of the board of education enrollment data and attendance data annually and monthly;[341] and the school record of any child must be furnished on request by the administrator of a non-public school.[342]

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[334] Ohio Rev. Code Ann., Tit. 33, Ch. 3301, Sec. 3301.07(D).

[335] Ibid., Sec. 3301.071. [336] Ibid., Sec. 3301.14.

[337] Ibid., Ch. 3313, Sec. 3313.74(A)(B).

[338] Ibid., Sec. 3313.80. [339] Ibid., Ch. 3315, Sec. 3315.33.

[340] Ibid., Ch. 3321, Sec. 3321.04; Sec. 3321.07.

[341] Ibid., Sec. 3321.12.

Oklahoma. The Oklahoma Statutes Annotated stated that educational corporations are to be regulated by special provisions;[343] a flag must be properly displayed at a non-public school;[344] the state department of education makes rules and regulations for the accrediting of non-public schools also, except no non-public schools may be accredited unless the members of the faculty hold state certificates;[345] every child of compulsory school attendance age must attend some school and comply with the rules of the school;[346] and the administrator of every non-public school must keep a complete record of attendance and report to the supervisor of the school census regarding absences and their causes.[347]

Oregon. The Oregon Revised Statutes stated that non-public schools which wish to operate as non-profit corporations are regulated by the special corporation law;[348] the superintendent of public instruction, if possible, should visit all chartered educational institutions, and collect information about them, and must include in his report to the legislative assembly reports on the number attending private schools;[349] nonprofit private educational institutions may participate in the state school funds lunch program;[350] in all private schools beginning not later than the eighth grade there must be instruction in the Constitution of the United States;[351] instruction, except in foreign languages, must be in the English language;[352] in all non-public schools of 50 or more pupils there must be a fire drill at least once a month, each teacher must instruct children not less than 30 minutes each month in fire dangers and drills, and the superintendent of public instruction must prepare a book of lessons with a chapter for each week on fire and fire danger;[353] children attending non-public schools are entitled to the same transportation benefits as are students attending public schools;[354] children attending a non-public school for an equivalent period of time are exempt from compulsory attendance at a public school;[355] every teacher must take an oath of allegiance;[356] and no person in charge of any non-public school may allow an individual to take up duties unless an oath has been administered.[357]

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[342] Ibid., Ch. 3331, Sec. 3331.13.

[343] Okla. Stat. Ann., Tit. 18, Sec. 14-541 to Sec. 14-573.

[344] Ibid., Tit. 25, Sec. 5-157.

[345] Ibid., Tit. 70, Sec. 2A-4(10).

[346] Ibid., Sec. 10-10.

[347] Ibid., Sec. 10-11.

[348] Ore. Rev. Stat., Tit. 30, Ch. 61, Sec. 005 to Sec. 990.

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[349] Ibid., Ch. 326, Sec. 326.020; Sec. 326.030.

[350] Ibid., Ch. 327, Sec. 327.515; Sec. 327.520; Sec. 327.530.

[351] Ibid., Ch. 336, Sec. 336.230. [352] Ibid., Sec. 336.270.

[353] Ibid., Sec. 336.340.

[354] Ibid., Ch. 338, Sec. 338.060.

[355] Ibid., Ch. 339, Sec. 339.030.

[356] Ibid., Ch. 342, Sec. 342.620.

[357] Ibid., Sec. 342.625.

Pennsylvania. Purdon's Pennsylvania Statutes Annotated stated that any person giving false information about bombs in any school is guilty of a misdemeanor;[358] the United States flag must be displayed at all non-public schools, and appropriate patriotic exercises conducted daily or at least one full period per week;[359] every child must present on entrance to a non-public school a certificate of vaccination;[360] every child must attend a school in which subjects prescribed by the state board of education are taught in the English language for the prescribed length of time;[361] the administrator of every non-public school must report information on enrollment, attendance, and unlawful absences to the appropriate school authorities;[362] non-public schools are able to participate in the nonprofit school lunch program;[363] any non-public school personnel who do not comply with the state laws may be fined;[364] pupils and personnel of non-public schools are included in the biennial medical and dental hygiene inspection required;[365] the superintendent of public instruction must prepare instructional materials on fire prevention, the curricula of every school must include some instruction in fire prevention, and fire drills must be held at least once a month;[366] in all non-public schools there must be integrated into the social studies curriculum the history and government of America, including important government documents, and study of the commonwealth, to enable students to exercise faithfully and intelligently their voting privileges and to understand the advantages of the republican form of government as compared with other forms of government;[367] the trustees of an academy or seminary may convey to the directors of the school districts the property and assets of the institution;[368] private schools or private academic schools are defined as schools offering instruction to 5 or more pupils and are identified as providing education generally and specifically;[369] the state board of private academic schools is created;[370] private schools are regulated by the state board of private academic schools, the provisions of the laws relating to private schools require licensing of all schools, and issuance and control of licenses is regulated;[371] religious and private academic schools are exempted from the private business school laws,[372] and from the provisions of correspondence school laws;[373] in first class cities general health regulations made by departments of health are applied to private schools and their employees;[374] health officers must inspect schools regarding communicable diseases;[375] private and parochial schools are protected from condemnation through laws of eminent domain;[376] and the department of public instruction may obtain a restraining order and injunction against anyone operating a private school without a license.[377]

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[358] Penn. Stat. Ann., Tit. 18, Ch. 2, Sec. 4329.

[359] Ibid., Tit. 24, Ch. 1, Sec. 7-771.

[360] Ibid., Sec. 13-1303.

[361] Ibid., Sec. 13-1327.

[362] Ibid., Sec. 13-1332.

[363] Ibid., Sec. 13-1337.

[364] Ibid., Sec. 13-1355.

[365] Ibid., Sec. 14-1401 to Sec. 14-1403.

[366] Ibid., Sec. 15-1518(a)(b).

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[367] Ibid., Sec. 16-1605(a).

[368] Ibid., Ch. 2, Sec. 801.

[369] Ibid., Ch. 10, Sec. 2731.

[370] Ibid.

[371] Ibid., Tit. 24, Ch. 10, Private Schools, Sec. 2731 to Sec. 2743.

[372] Ibid., Ch. 11, Sec. 2752.

[373] Ibid., Ch. 12, Sec. 2772.

[374] Ibid., Tit. 53, Ch. 38, Sec. 14402.

Rhode Island. The General Laws of Rhode Island, 1956, stated that regional school districts may establish services for all pupils of the regional school district to provide transportation to all schools, to provide health facilities, to provide guidance services, to provide other services as determined by the people of the regional district;[378] any nonprofit non-public school may participate in the nonprofit school lunch program of the state if the school meets state standards;[379] every private school teacher must keep attendance records daily and must prepare any report required by school authorities;[380] some credit may be given in computing state retirement benefits for teachers for services in private schools;[381] a child must attend a public school unless he presents a certificate stating that he attends an approved private school;[382]

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[375] Ibid., Ch. 91, Sec. 48206.

[376] Ibid., Ch. 141, Sec. 66101.

[377] Ibid., Ch. 6, Sec. 1036.1 to Sec. 1036.4.

[378] Gen. Laws R.I., 1956, Sec. 16-3-3.

[379] Ibid., Sec. 168-7 to Sec. 16-8-11.

[380] Ibid., Sec. 16-12-4.

[381] Ibid., Sec. 16-16-6.

[382] Ibid., Sec. 16-19-1.

a private school may be approved by the school committee if the period of attendance is substantially that of the public schools, registers are kept and the proper reports made, English is the language of instruction, the teaching is thorough and efficient, and reading, writing, geography, arithmetic, the history of Rhode Island, the history of the United States, and the principles of American government are taught;[383] schools must be closed on stipulated legal holidays;[384] children attending non-profit private schools are entitled to the same transportation benefits as are those attending public schools;[385] the board of education must establish proper standards for physical facilities used as schools;[386] emergency drills must be held fifteen times a year;[387] the board of education must establish a uniform fire code and drill tactics to be used by all schools;[388] all approved schools must have an approved health program and include health education;[389] every community may appoint a physician to examine all school children;[390] every child must have vision, hearing, and speech examinations and records must be kept of such;[391] an approved private school must include instruction from the fourth grade in the history and government of Rhode Island, and in high schools instruction must be given in the governments and Constitutions of the United States and Rhode Island, the course of studies to be determined by the board of education;[392] instruction in health and physical education must be given on an average of at least 20 minutes per day;[393] uniform aptitude and intelligence testing may be provided for all pupils attending approved schools;[394] any child admitted to any non-public school must present a certificate of vaccination for small pox;[395] any school receiving either direct grants or tax exemption from the state may be visited by the school committee of the town;[396] no secondary school may be incorporated or established in the state to grant diplomas, unless the board of education approves and certifies to the secretary of state that adequate facilities and faculty are provided, and the board of education has approved the institution as being in compliance with general laws;[397] and all private schools are required to be registered, the register of approvals to be open at the state capital, and annual reports are to be submitted to the state board of education.[398]

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[383] Ibid., Sec. 16-19-2.

[384] Ibid., Sec. 16-20-1.

[385] Ibid., Sec. 16-21-2.

[386] Ibid., Sec. 16-21-3.

[387] Ibid., Sec. 16-21-4.

[388] Ibid., Sec. 16-21-5.

[389] Ibid., Sec. 16-21-7.

[390] Ibid., Sec. 16-21-9.

[391] Ibid., Sec. 16-21-14.

South Carolina. The Code of Laws of South Carolina, 1962, stated that a census must be made by the governing board of the public schools of a district of all children who are not enrolled in public schools and a complete list and related information must be filed with the county superintendent;[399] the authorities of any non-public schools must report annually to the state superintendent such statistics on pupils, instructors, courses of study, tuition cost, and general condition of the institution;[400] and private schools must also submit upon request a report to the county superintendent of schools.[401]

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[392] *Ibid.*, Sec. 16-22-2. [393] *Ibid.*, Sec. 16-22-4.

[394] *Ibid.*, Sec. 16-22-9. [395] *Ibid.*, Sec. 16-38-2.

[396] *Ibid.*, Sec. 16-38-10. [397] *Ibid.*, Sec. 16-40-1.

[398] *Ibid.*, Sec. 16-40-7 to 16-40-15.

[399] Code of S. C., 1962, Tit. 21, Ch. 16, Sec. 21-764.

South Dakota. The South Dakota Code of 1939, the Supplement to South Dakota Code of 1939, 1960, stated that the state board of education may establish standards for classifying, approving, and accrediting both public and non-public schools;[402] it is the duty of the state superintendent of public instruction to accredit, classify, and approve schools according to the standards established by the state board;[403] all non-public school instruction accepted in lieu of public school instruction must conform to the state course of study, and be approved by the county superintendent of schools who has supervision over such schools and must exercise visitation and inspection, such schools must employ certified teachers, and such schools must submit the same attendance reports as are required in the public schools;[404] non-public school teachers may attend institutes conducted by the county superintendent of schools;[405] legal school age regulations are applied to non-public schools also;[406] instruction must be given in all schools in the Constitutions of the state and the United States;[407] instruction must be given in non-public schools in the nature of alcoholic drinks and narcotics, moral instruction, patriotism, citizenship, and history;[408] every child must attend a public or non-public school for the required term;[409] the authorities of any non-public school are given permission to require a physical examination of any teacher or prospective teacher;[410] any teacher who teaches in a private school without a certificate which would enable him to teach a comparable area in a public school is guilty of a misdemeanor and is subject to fine;[411] any person employed by a non-public school who fails to submit the necessary reports is guilty of a misdemeanor;[412] disturbance of a non-public school while in session is a misdemeanor;[413] teaching in any language other than English, except for foreign languages, is prohibited;[414] the state fire marshal is given authority to inspect all school properties where 50 or more students are educated;[415] and construction requirements for all schools must meet appropriate safety conditions.[416]

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[400] Ibid., Ch. 2, Sec. 21-25.

[401] Ibid., Ch. 4, Sec. 21-89.

[402] S.D. Code, 1939, Tit. 15, Ch. 15.08, Sec. 15.0803(4)(a).

[403] Ibid., Ch. 15.09, Sec. 15.0905(15).

[404] Ibid., Ch. 15.10, Sec. 15.1006; Sec. 15.1008.

[405] Ibid., Ch. 15.19, Sec. 15.1901.

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[406] Ibid., Ch. 15.30, Sec. 15.3002.

[407] Ibid., Ch. 15.31, Sec. 15.3104.

[408] Ibid., Sec. 15.3105.

[409] Ibid., Ch. 15.32, Sec. 15.3202.

[410] Ibid., Ch. 15.38, Sec. 15.3813.

[411] Ibid., Ch. 15.99, Sec. 15.9904.

[412] Ibid., Sec. 15.9905.

[413] Ibid., Sec. 15.9911.

[414] Ibid., Sec. 15.9913.

[415] Ibid., Tit. 31, Ch. 31.04C, Sec. 31. 04C01.

Tennessee. The Tennessee Code Annotated, Official Edition stated that incorporation of non-public schools and educational associations is authorized;[417] the county board of education may enter into contracts with nonsectarian private schools under stipulated conditions;[418] every child must attend a public or non-public school;[419] it is the duty of administrators of non-public schools to submit reports of attendance, enrollments, withdrawals, and transfers to appropriate public school officials;[420] and every accredited non-public high school must offer a course in American history and government.[421]

Texas. Vernon's Texas Civil Statutes stated that all school teachers, including non-public school teachers, are exempted from jury service;[422] no provisions of the public school acts are to be considered inimical to the status of non-public schools operating in the state, and graduates and staff of such schools are to receive credit to meet the requirements of high school;[423] any child in attendance at a non-public school is exempt from compulsory attendance at a public school, if the non-public school includes a course of study in good citizenship and English is the basis of instruction in all subjects;[424] the county superintendent of schools is required to include in the census lists all children attending a non-public school, and officials of non-public schools must submit reports on enrollment and absences to the county superintendent and the attendance officers;[425] no part of the public school fund may be appropriated to or used for the support of a sectarian school;[426] the passage of the public school foundation act was not intended to be inimical to private or parochial schools;[427] and no school official or parent may permit any parochial school child to attend school if the child has a communicable disease.[428]

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[416] Ibid., Sec. 31.04C03.

[417] Tenn. Code Ann., Tit. 48, Ch. 1, Sec. 48-102.

[418] Ibid., Tit. 49, Ch. 2, Sec. 49-231.

[419] Ibid., Ch. 17, Sec. 49-1708.

[420] Ibid., Sec. 49-1717 to Sec. 17-1718.

[421] Ibid., Ch. 19, Sec. 49-1904.

[422] Tex. Civ. Stat., Tit. 42, Ch. 7, Art. 2135.

[423] Ibid., Tit. 49, Ch. 9B, Art. 2654-7, Sec. 2a.

Utah. The Utah Code Annotated, 1953, stated that there must be regular courses of instruction in the Constitution of the United States as determined by the state board of education;[429] in his biennial report to the governor the state superintendent must include as far as can be ascertained the number and condition of private schools and academies in the state;[430] and every child must attend the public school or a regularly established private school during the school year of the district in which he resides.[431]

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[424] Ibid., Ch. 18, Art. 2893(1); Tex. Penal Code, Tit. 7 Art. 298.

[425] Ibid., Art. 2897. [426] Ibid., Ch. 19, Art. 2899.

[427] Ibid., Ch. 22, Art. 2922(17).

[428] Ibid., Tit. 71, Ch. 4, Art. 4477, Rule 30.

[429] Utah Code Ann., 1953, Tit. 53, Ch. 1, Sec. 53-1-1.

[430] Ibid., Ch. 3, Sec. 53-3-5.

Vermont. The Vermont Statutes Annotated stated that any professional employee of a non-public school wherein attendance is considered equivalent to a public school must subscribe to a loyalty oath;[432] non-public schools are allowed to purchase at actual cost the state published textbook on the history of Vermont;[433] the commissioner of education must exercise supervision over attendance and instruction at schools wherein tuition is paid in part or wholly by public funds;[434] an academy is defined as an educational institution legally incorporated which provides instruction equivalent to that of a public high school, if the academy is approved by the board of education;[435] town districts may pay tuition at an approved academy for pupils if the tuition does not exceed the cost of educating the child, and the town district does not maintain a high school;[436] pupils are not eligible for tuition payments unless it is certified that they have successfully completed the preceding grades;[437] in districts where book rent is charged instead of tuition, the book rent may be paid under the same conditions as tuition could be paid;[438] exercises in commemoration of Abraham Lincoln must be conducted in all schools on the last school day before February 12 each year;[439] a child must attend the public school unless he is receiving the same education elsewhere;[440] the health services provided by the medical inspectors of the town and school district may be used for inspection of private schools and pupils, and for the control of communicable diseases;[441] teachers from private nonsectarian high schools which serve as town high schools are eligible for benefits in the state teacher's retirement system of Vermont;[442] and pupils from academies used as high schools are eligible for scholarships provided by town funds.[443]

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[431] Ibid., Ch. 24, Sec. 53-24-1.

[432] Vt. Stat., Ann., Tit. 16, Ch. 1, Sec. 4.

[433] Ibid., Ch. 3, Sec. 146, (b)(1).

[434] Ibid., Ch. 5, Sec. 202(7). [435] Ibid., Ch. 21, Sec. 791(7).

[436] Ibid., Ch. 21, Sec. 793(b); Sec. 798; Sec. 799.

[437] Ibid., Ch. 21, Sec. 800; Sec. 804.

Virginia. The Code of Virginia, 1950, stated that the state board may recommend standards for non-public kindergartens;[444] any person or organization may lease or use any building for school purposes without complying with building code requirements, as long as a permit to use a particular building is obtained for the state department of education;[445] teachers who received state scholarships may cancel their obligation for such scholarships by teaching one year in a private nonsectarian school;[446] in order to promote the interests of the citizenry and the interests of education the state may appropriate monies for scholarships from public funds for education at private nonsectarian schools, and other political subdivisions may appropriate funds likewise;[447] children attending a private nonsectarian elementary school may receive a state scholarship of $125 per school year, and high school students may receive a scholarship of $150 per year;[448] if a child receives a state scholarship he may receive a scholarship from the local political subdivision to increase the total to $250 if the child attends elementary school and to $275 if the child attends high school, or the actual cost of tuition in the private school, or the total cost expended for the public schools in the locality in the last year they were in operation, the child to receive a total sum of which ever of the three sums is the lowest;[349] the state board may regulate any school at which children are attending on a state scholarship;[450] payment of local scholarships may be made and controlled by the state board of education if the governing body of the county fails to do so;[451] the state board may not refuse to accredit any school because of the condition of the building in which the school is conducted;[452] every child must attend a school which is in session for the same amount of time as the public schools are in session;[453] the state or political subdivisions, may appropriate money to furnish transportation or to reimburse parents for transportation to non-public schools;[454] children of persons who were killed or disabled in war service to the country are eligible for aid for training, supplies, room and board, and fees at any secondary school approved by the superintendent of public instruction for that purpose;[455] persons who are infected with any communicable disease should be excluded from any building used for school purposes;[456] use of common drinking cups is prohibited in any schools;[457] common towels may not be used in any schools;[458] regulations regarding restaurants and public eating places are applied to private schools operating food services;[459] any educational corporation organized after December 29, 1956, may elect to and contribute to and belong to the state system of retirement for teachers;[460] any political subdivision may allow taxpayers to deduct up to 25% of their real estate and personal property taxes due from their tax bill as a credit for monies actually spent for education at a nonsectarian private school.[461]

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[438] Ibid., Sec. 805. [439] Ibid., Ch. 23, Sec. 904.

[440] Ibid., Ch. 25, Sec. 1121.

[441] Ibid., Ch. 31, Sec. 1381 - Sec. 1382.

[442] Ibid., Ch. 55, Sec. 1931(V). [443] Ibid., Ch. 79, Sec. 2534.

[444] Va. Code, 1950, Tit. 22, Ch. 2, Sec. 22-21.

[445] Ibid., Sec. 22-21.1. [446] Ibid., Ch. 4, Sec. 23-38.1.

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[447] *Ibid.*, Ch. 7.3, Sec. 22.115.29; Sec. 22-115.31.

[448] *Ibid.*, Sec. 22-115.30. [449] *Ibid.*, Sec. 22-115.32.

[450] *Ibid.*, Sec. 22-115.33.

[451] *Ibid.*, Sec. 22-115.34 to Sec. 22-115.37.

[452] *Ibid.*, Ch. 9, Sec. 22-159.

[453] *Ibid.*, Ch. 12, Sec. 22-275.1; Sec. 22.275.2.

Washington. The Revised Code of Washington Annotated stated that formation of educational corporations would be regulated;[462] study of the constitutions and government is compulsory in all schools whose work is presented in lieu of attendance at schools under public management;[463] a one year course in the history and government of the United States must be included in every high school, and a one semester course in the history and government of Washington must be provided;[464] school attendance for the same length of time the public schools are in session is compulsory through the eighth grade;[465] the executive authority of every non-public school must submit an attendance report and such other information as may be required to the county superintendent and the state superintendent annually;[466] the state board of education may examine and accredit secondary schools, except that no school may be accredited if secret societies are allowed to exist therein;[467] and the superintendent of public instruction may appoint safety patrols to exercise their function at private schools.[468]

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[454] Ibid., Ch. 13, Sec. 22-294.1 to Sec. 22.294.3.

[455] Ibid., Tit. 23, Ch. 1, Sec. 23-7.1(1)(4).

[456] Ibid., Tit. 32, Ch. 3.1, Sec. 32-50.

[457] Ibid., Sec. 32-59. [458] Ibid., Sec. 32-60.

[459] Ibid., Tit. 35, Ch. 3, Sec. 35-25(1).

[460] Ibid., Tit. 51, Ch. 3.2, Sec. 51-111.38:1 to Sec. 51-111.38:3.

[461] Ibid., Tit. 58, Ch. 1, Sec. 58-19.1 to Sec. 58.19.5.

West Virginia. The West Virginia Code, 1961, Annotated, stated that the state board of education must make rules for the accreditation, classification, and standardization of all schools in the state;[469] property or bequests given to any educational institution must be used exclusively for that purpose;[470] the board of trustees of any educational institution is controlled by the laws and incorporation of that institution;[471] the personal and real property of educational corporations is exempted from taxation;[472] all courses of instruction must be in English;[473] courses in fire prevention must be taught in all schools;[474] the state board of education prescribes courses in the history and Constitutions of the state and nation;[475] the board of education may provide, upon application from private schools, textbooks for the use of children whose parents are too poor to purchase them;[476] and children are exempted from attendance at a public school if the children are attending a non-public school for a comparable length of time, and the authorities of each school provide the county superintendent of schools with reports relating to instruction, attendance, and program of the children.[477]

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[462] Rev. Code Wash. Ann., Ch. 24.08, Sec. 24.08.010 to Sec. 24.08.900.

[463] Ibid., Ch. 28.02, Sec. 28.02.080.

[464] Ibid., Ch. 28.05, Sec. 28.05.050.

[465] Ibid., Ch. 28.27, Sec. 28.27.010.

[466] Ibid., Ch. 28.27, Sec. 28.27.020; Ch. 43.11, Sec. 43.11.030.

[467] Ibid., Ch. 43.63, Sec. 43.63.140.

[468] Ibid., Ch. 46.48, Sec. 46.48.160.

Wisconsin. West's Wisconsin Statutes Annotated stated that each year the administrator of every public and non-public school must submit to the department of public instruction, on forms provided, a statement of enrollment and other data so the department can prepare reports which will enable private and public school authorities to make essential projections for building needs, teacher supply, and financial matters;[478] every school curriculum must include at least fifteen minutes per week in the study of dairy products;[479] every school must instruct and use appropriate ceremonials regarding the flag, the Constitutions, citizenship, and the Declaration of Independence;[480] a flag must be displayed in every school, a first aid kit must be provided in every school, a fire drill must be held at least once per month, and the pledge of allegiance is to be recited at least once per week in all schools;[481] appropriate insurance is compulsory on school buses;[482] every child must attend some school;[483] the district clerk must make a verified report to the county superintendent of schools, including such facts and statistics regarding private schools as are required by the state superintendent;[484] all teachers of private schools must keep records of truancy and attendance, and make such records available to the truancy officers;[485] the certificate or diploma indicating that an individual has completed the prescribed course of study at an approved non-public school entitles an individual to admission to a public high school;[486] no jail may be constructed within 300 feet of any public, private, parochial, vocational, or adult school;[487] no liquor license may be issued for any establishment less than 300 feet from an established non-public school;[488] and school corporations are given the power usually necessary for educational corporations to maintain propery, establish by-laws, develop courses of study, and regulate its own affairs.[489]

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[469] W.Va. Code, 1961, Ch. 18, Art. 2, Sec. 1731.

[470] Ibid., Ch. 35, Art. 2, Sec. 3501.

[471] Ibid., Sec. 3502 - Sec. 3505.

[472] Ibid., Ch. 11, Art. 3, Sec. 678.

[473] Ibid., Ch. 18, Art. 2, Sec. 1732.

[474] Ibid., Sec. 1733.

[475] Ibid., Sec. 1734.

[476] Ibid., Art. 5, Sec. 1782(2).

[477] Ibid., Art. 8, Sec. 1847(A).

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[478] West's Wisc. Statutes Ann., Ch. 39, Sec. 39.027.

[479] Ibid., Ch. 40, Sec. 40.46(9).

[480] Ibid., Sec. 40.46(10).

[481] Ibid., Sec. 40.47.

[482] Ibid., Sec. 40.57.

[483] Ibid., Sec. 40.77.

[484] Ibid., Sec. 40.70(1)(i).

[485] Ibid., Sec. 40.78(3).

Wyoming. The Wyoming Statutes, 1957, stated that a child is not required to attend a public school if he attends another private or parochial school during the entire time the public schools are in session or attends two schools for the appropriate length of time;[490] the state superintendent of public instruction exercises general control over the educational interests of the state;[491] a school is defined as any institution whose primary purpose is education where instruction is given at elementary or secondary levels, and a school lunch program is defined as lunches served by any school of the state on a nonprofit basis;[492] and parochial schools or schools of any religious or church corporation with intramural or interscholastic competitions are exempted from the police regulations of the athletic commission.[493]

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[486] Ibid., Sec. 40.90. [487] Ibid., Ch. 53.32.

[488] Ibid., Ch. 176, Sec. 176.05(9m). [489] Ibid., Ch. 182, Sec. 182.028.

[490] Wyo. Statutes, 1957, Tit. 21, Ch. 4, Sec. 21-244.

[491] Ibid., Tit. 21, Ch. 1, Sec. 21-5.

[492] Ibid., Ch. 8, Sec. 21-323 to Sec. 21-325.

[493] Ibid., Ch. 169, Sec. 169.22(1).

II. SUMMARIZATION OF STATE STATUTORY REFERENCES TO NON-PUBLIC SCHOOLS

The references from the statutes of the fifty states to non-public schools were arranged in six tables, which contained citations concerned with supervision, compulsory attendance, curriculum requirements, general welfare, public aid to non-public schools, and miscellaneous matters concerned with non-public schools. The tables were numbered from V to X, inclusive.

Table V. The data in Table V were concerned with provisions in the state statutes which were related to the concept of supervision. References placed in Table V were considered supervisory because the statute placed an obligation or restriction upon the operators of the non-public schools. The most frequent provisions in the various statutes were those which dealt with records and reports. Forty-seven of the states included in their statutes some provisions which were considered supervisory in nature.

Table VI. The data in Table VI were concerned with provisions in the statutes related to meeting compulsory attendance requirements at non-public schools. The statutes of 46 states contained at least one, or more, references to compulsory attendance and non-public schools. Some of the provisions were quite simple and stated that a child must attend some school, while other provisions were quite detailed, and stipulated terms, conditions, and standards necessary for attendance at a non-public school to meet compulsory attendance requirements.

TABLE V

STATE STATUTORY PROVISIONS RELATED TO NON-PUBLIC SCHOOLS CONCERNED WITH SUPERVISION

State	Citation	Topic
Alabama	Tit. 52, Ch. 4, Sec. 55; Ch. 11, Sec. 306-Sec. 307; Ch. 31, Sec. 547 and Sec. 548	Reports required
Alabama	Tit. 52, Ch. 11, Sec. 297 and Sec. 299	Instruction specified
Alaska	Tit. 14, Ch. 05, Sec. 070-Sec. 080; Ch. 45, Sec. 030	Accreditation standards
Alaska	Tit. 14, Ch. 10, Sec. 140(1)	Reports required
Alaska	Tit. 14, Ch. 45, Sec. 010	Certified teachers
Alaska	Tit. 14, Ch. 45, Sec. 020	Diplomas, exams
Arizona	Tit. 15, Sec. 15-123B	Census required
Arkansas	Tit. 80, Ch. 16, Sec. 80-1605	English required
California	Ed. Code, Sec. 7901-Sec. 7904	Prerequisites
California	Ed. Code, Sec. 12151; Sec. 12154-Sec. 12155	Compulsory attendance requirements
Colorado	Ch. 123, Sec. 123-21-14	Reports permitted
Connecticut	Tit. 10, Ch. 164, Sec. 17	English required, foreign language limited
Connecticut	Tit. 10, Ch. 168, Sec. 188	Reports required
Delaware	Tit. 14, Ch. 27, Sec. 2702-Sec. 2703	Exams permitted
Delaware	Tit. 14, Ch. 27, Sec. 2704	Reports required
Delaware	Tit. 14, Ch. 27, Sec. 3506	Labor records

TABLE V (Continued)

State	Citation	Topic
Florida	Tit. 15, Ch. 232, Sec. 232.14-Sec. 232.15	Reports and records required
Florida	Tit. 15, Ch. 247, Sec. 247.01-Sec. 247.20	Minimum standards
Georgia	Tit. 32, Ch. 32, Sec. 508	Information required
Georgia	Tit. 32, Ch. 32, Sec. 2214	Records required
Hawaii	Tit. 6, Ch. 38, Sec. 38-6	Teacher certification
Hawaii	Tit. 6, Ch. 40, Sec. 40-3	English required
Hawaii	Tit. 6, Ch. 40, Sec. 40-9	General supervision
Hawaii	Tit. 6, Ch. 40, Sec. 40-19 to Sec. 40-20	Records and reports required
Idaho	Tit. 33, Ch. 1, Sec. 199	Accreditation
Indiana	Tit. 28, Ch. 3, Sec. 38-304; Ch. 5, Sec. 28-505; Sec. 28-511	Inspection
Indiana	Tit. 28, Ch. 5, Sec. 28-505; Ch. 34, Sec. 28-3402	English required
Indiana	Tit. 28, Ch. 5, Sec. 28-512	Records required
Indiana	Tit. 28, Ch. 5, Sec. 28-530	Transfer papers
Iowa	Tit. 12, Ch. 257, Sec. 257.17	State superintendent
Iowa	Tit. 12, Ch. 280, Sec. 280.5	English required
Iowa	Tit. 12, Ch. 299, Sec. 299.3	Reports required
Kansas	Tit. 72, Art. 48, Sec. 72-4801	English required
Kentucky	Tit. 13, Ch. 156, Sec. 156.160(8)	Approval standards
Kentucky	Tit. 13, Ch. 158, Sec. 158.080	Length of term

TABLE V (Continued)

State	Citation	Topic
Kentucky	Tit. 13, Ch. 159, Sec. 159.040; Sec. 159.160	Records required
Kentucky	Tit. 23, Ch. 273, Sec. 010.990	Land holdings
Louisiana	Tit. 17, Ch. 1, Sec. 229	Records required
Louisiana	Tit. 17, Ch. 2, Sec. 2	Approval
Maine	Ch. 41, Sec. 11, VII	English required, approved studies, or prescribed studies
Maine	Ch. 41, Sec. 98; Sec. 100	Approval standards
Maine	Ch. 41, Sec. 125	Reports required
Maine	Ch. 41, Sec. 126-Sec. 128	Tuition audits
Maryland	Art. 77, Ch. 3, Sec. 25(a)	Academic records
Maryland	Art. 77, Ch. 3, Sec. 24	Approval required
Maryland	Art. 77, Ch. 3, Sec. 25(b)-Sec. 25(c)	Inspection and reports required
Maryland	Art. 77, Ch. 3, Sec. 25(d)	Rules and regulations
Maryland	Art. 77, Ch. 3, Sec. 31	Enrollment and course of study reports
Massachusetts	Tit. 12, Ch. 69, Sec. 4: Ch. 72, Sec. 1; Sec. 2	Reports required
Massachusetts	Tit. 12, Ch. 76, Sec. 1	English required
Massachusetts	Tit. 12, Ch. 76, Sec. 13	Transfer forms
Michigan	Sec. 15.1921	Teacher qualification, courses of study
Michigan	Sec. 15.1923	Certified teachers

TABLE V (Continued)

State	Citation	Topic
Michigan	Sec. 15.1924	Superintendent of Public Instruction
Michigan	Sec. 15.1925	Inspection
Michigan	Sec. 15.3252	Information reported
Michigan	Sec. 15.3267	Academic Records
Michigan	Sec. 15.3360	English required
Michigan	Sec. 15.3738	Reports required
Minnesota	Ch. 120, Sec. 10, Subd. 2	Minimum standards, English required
Minnesota	Ch. 120, Sec. 12, Subd. 2	Reports required
Minnesota	Ch. 121, Sec. 11, Subd. 9; Subd. 10	Exams permitted
Montana	Tit. 75, Ch. 13, Sec. 75-1309 (c); Ch. 29, Sec. 75-2901; Sec. 75-2904.	Information required
Nebraska	Ch. 79, Art. 2, Sec. 79-207	Records and reports required
Nebraska	Ch. 79, Art. 4, Sec. 79-497	Exam waiver
Nebraska	Ch. 79, Art. 12, Sec. 79-1201; Sec. 79-1233; Sec. 79-1267	Certificates required
Nebraska	Ch. 79, Art. 17, Sec. 79-1701 to Sec. 79-1707; Sec. 79-1247.02	General laws applied, equivalent certifications, adequate supplies, inspection, accreditation
Nevada	Tit. 34, Ch. 393, Sec. 040; Sec. 070	Equivalent instruction
Nevada	Tit. 34, Ch. 392, Sec. 160	Teacher knowledge

TABLE V (Continued)

State	Citation	Topic
Nevada	Tit. 34, Ch. 394, Sec. 010-Sec. 120	Licensing exemptions
Nevada	Tit. 34, Ch. 394, Sec. 140	English required
New Hampshire	Tit. 15, Ch. 186, Sec. 186;11, XVII, XIX	Approve schools, contracts
New Hampshire	Tit. 15, Ch. 189, Sec. 189:19-Sec. 189:21	English required
New Hampshire	Tit. 15, Ch. 194, Sec. 194:31	Registers, reports required
New Jersey	Tit. 18, Ch. 3, Sec. 18:3-18	Information reports
New Jersey	Tit. 18, Ch. 20, Sec. 18:20-25 to Sec. 18:20-30	Boarding schools
New Mexico	Ch. 73, Art. 1, Sec. 73-1-7; Art. 2, Sec. 73-2-1; Art. 5, Sec. 73-5-4	Reports required
New Mexico	Ch. 73, Art. 1, Sec. 73-1-7	Standards
New Mexico	Ch. 73, Art. 13, Sec. 73-13-3	Absences reported
New York	Ed. Law, Sec. 3204	190 days required
New York	Ed. Law, Sec. 3210, 2e	Certificate of registration
New York	Ed. Law, Sec. 3211	Attendance records
North Carolina	Ch. 115, Sec. 115-255	State Board of Education, English required
North Carolina	Ch. 115, Sec. 115-256	Teachers certificates
North Carolina	Ch. 115, Sec. 115-257	Attendance and enrollment data
North Dakota	Ch. 15-21, Sec. 15-21-14	Information required

TABLE V (Continued)

State	Citation	Topic
North Dakota	Ch. 15-34, Sec. 15-34-03(1)	Approval
Ohio	Tit. 33, Ch. 3301, Sec. 3301.07(D)	Minimum standards
Ohio	Tit. 33, Ch. 3301, Sec. 3301.071	Teacher certification
Ohio	Tit. 33, Ch. 3301, Sec. 3301.14	Annual report
Ohio	Tit. 33, Ch. 3321, Sec. 3321.04	Term length
Ohio	Tit. 33, Ch. 3321, Sec. 3321.12; Ch. 3331, Sec. 3331.13	Requests and records
Oklahoma	Tit. 70, Sec. 2A-4(10)	Accrediting, teacher certificates
Oklahoma	Tit. 70, Sec. 10-11	Attendance reports
Oregon	Tit. 30, Ch. 326, Sec. 326.020; Sec. 326.030	Visitation, information
Oregon	Tit. 30, Ch. 336, Sec. 336.270	English required
Oregon	Tit. 30, Ch. 336, Sec. 336.340	Fire prevention
Pennsylvania	Tit. 24, Ch. 1, Sec. 13-1327	English required; prescribed term
Pennsylvania	Tit. 24, Ch. 1, Sec. 13-1332	Attendance reports
Pennsylvania	Tit. 24, Ch. 10, Sec. 2731 to Sec. 2743; Ch. 11, Sec. 2752; Ch. 12, Sec. 2772; Tit. 53, Ch. 6, Sec. 1036.1 to 1036.4	State Board of Private Academic Schools
Rhode Island	Sec. 16-12-4	Attendance, other reports required
Rhode Island	Sec. 16-19-2	Approval standards

TABLE V (Continued)

State	Citation	Topic
Rhode Island	Sec. 16-38-10	Visitation
Rhode Island	Sec. 16-40-1	Approval
Rhode Island	Sec. 16-40-7 to Sec. 16-40-15	Annual reports, registration
South Carolina	Tit. 21, Ch. 2, Sec. 21-25; Ch. 4, Sec. 21-89; Ch. 16, Sec. 21-764	Reports required
South Dakota	Tit. 15, Ch. 15.08, Sec. 15.0803(4)(a); Ch. 15.09, Sec. 15.0905(15)	Accrediting, approval
South Dakota	Tit. 15, Ch. 15.10, Sec. 15.006; Sec. 15.1008; Ch. 15.99, Sec. 15.9905	Inspection, visitation, reports required
South Dakota	Tit. 15, Ch. 15.30, Sec. 15.3002	Entrance age
South Dakota	Tit. 15, Ch. 15.99, Sec. 1599.13	English required
Tennessee	Tit. 49, Ch. 17, Sec. 49-1717; Sec. 49-1718	Reports required
Texas	Tit. 49, Ch. 18, Art. 2893(1)	English required
Texas	Tit. 49, Ch. 18, Art. 2897	Census, reports required
Utah	Tit. 53, Ch. 3, Sec. 53-3-5	Information
Vermont	Tit. 16, Ch. 5, Sec. 202(7)	Tuition supervisor
Vermont	Tit. 16, Ch. 21, Sec. 791(7)	Academy Approval
Vermont	Tit. 16, Ch. 25, Sec. 1121	Comparable education
Virginia	Tit. 22, Ch. 2, Sec. 22-21	Kindergarten standards

TABLE V (Continued)

State	Citation	Topic
Virginia	Tit. 22, Ch. 73, Sec. 22-115.33	State Board
Virginia	Tit. 22, Ch. 9, Sec. 22-159	Accreditation provision
Virginia	Tit. 22, Ch. 12, Sec. 22-275.10; Sec. 22-275.2	Length of term
Washington	Ch. 28.27, Sec. 28.27.010; Ch. 28.27, Sec. 28.27.020; Ch. 43.11, Sec. 43.11.030	Length of term reports required
Washington	Ch. 43.63, Sec 43.63.140	Examination, accreditation, secret societies
West Virginia	Ch. 18, Art. 2, Sec. 1731	Accreditation
West Virginia	Ch. 35, Art. 2, Sec. 3501	Gifts protected
West Virginia	Ch. 18, Art. 2, Sec. 1732	English required
West Virginia	Ch. 18, Art. 8, Sec. 1847(A)	Comparable term, reports required
Wisconsin	Ch. 39, Sec. 39.027; Ch. 40, Sec. 40.70(1)(i); Sec. 40.78 (3)	Reports, records, required
Wyoming	Tit. 21, Ch. 1, Sec. 21-5	General control

TABLE VI

STATE STATUTORY PROVISIONS RELATED TO NON-PUBLIC SCHOOLS CONCERNED WITH COMPULSORY ATTENDANCE

State	Citation
Alabama	Tit. 52, Ch. 11, Sec. 297 and Sec. 299
Alaska	Tit. 14, Ch. 30, Sec. 010 and Sec. 030
Arizona	Tit. 15, Sec. 15-321,B
Arkansas	Tit. 80, Ch. 15, Sec. 80-1502
California	Ed. Code, Sec. 12151; Sec. 12154-Sec. 12155
Colorado	Ch. 123, Sec. 123-20-1; Sec. 123-20-16
Connecticut	Tit. 10, Ch. 168, Sec. 188
Delaware	Tit. 14, Ch. 27, Sec. 2702-Sec. 2703
Florida	Tit. 15, Ch. 232, Sec. 232.14; Ch. 232, Sec. 232.19 Ch. 247, Sec. 247.15
Georgia	Tit. 32, Ch. 32, Sec. 2104
Hawaii	Tit. 6, Ch. 40, Sec. 40-3; Sec. 40-6; Sec. 40-9
Idaho	Tit. 33, Ch. 2, Sec. 202
Illinois	Ch. 122, Sec. 13-9
Indiana	Tit. 28, Ch. 5, Sec. 28-505
Iowa	Tit. 12, Ch. 299, Sec. 299.1
Kansas	Tit. 72, Art. 48, Sec. 72-4801
Kentucky	Tit. 13, Ch. 158, Sec. 158.115; Ch. 159, Sec. 159.030(b)
Maine	Ch. 41, Sec. 92
Maryland	Tit. 77, Ch. 23, Sec. 223(a); Sec. 233
Massachusetts	Tit. 12, Ch. 69, Sec. 4
Michigan	Sec. 15.1924; Sec. 15.3731-Sec. 15.3732
Minnesota	Ch. 120, Sec. 10, Subd. 1; Subd. 2; Ch. 127, Sec. 19
Montana	Tit. 75, Ch. 29, Sec. 75-2901; Sec. 75-2904
Nebraska	Ch. 79, Art. 2, Sec. 79-201; Sec. 79-207
Nevada	Tit. 34, Ch. 392, Sec. 040; Sec. 070
New Hampshire	Tit. 15, Ch. 193, Sec. 193.1 - Sec. 193.2
New Jersey	Tit. 18, Ch. 14, Sec. 18:14-14; Ch. 19, Sec. 18:19-7
New Mexico	Ch. 73, Art. 7, Sec. 73-7-36; Art. 12, Sec. 73-12-11
New York	Ed. Law, Sec. 3204; Sec. 3210, 1 to 2d
North Carolina	Ch. 115, Sec. 115-166
North Dakota	Ch. 15-34, Sec. 15-34-13(1)
Ohio	Tit. 33, Ch. 3321, Sec. 3321.04; Sec. 3321.07
Oklahoma	Tit. 70, Sec. 10-10
Oregon	Tit. 30, Ch. 339, Sec. 339.030
Pennsylvania	Tit. 24, Ch. 1, Sec. 13-1327
Rhode Island	Sec. 16-19-1
South Dakota	Tit. 15, Ch. 15.32, Sec. 15.3202
Tennessee	Tit. 49, Ch. 17, Sec. 49-1708

TABLE VI (Continued)

State	Citation
Texas	Civ. Stat., Tit. 49, Ch. 18, Art. 2893(1); Pen. Code, Tit. 7, Art. 298
Utah	Tit. 53, Ch. 24, Sec. 53-24-1
Vermont	Tit. 16, Ch. 25, Sec. 1121
Virginia	Tit. 22, Ch. 12, Sec. 22-275.1; Sec. 22-275.2
Washington	Ch. 28.02, Sec. 28.02.080; Ch. 28.27, Sec. 28.27.010
West Virginia	Ch. 18, Art. 5, Sec. 1782 (2)
Wisconsin	Ch. 40, Sec. 40.77
Wyoming	Tit. 21, Ch. 4, Sec. 21-244

Table VII. The data in Table VII were concerned with provisions in the statutes related to curriculum requirements. Although these matters could be considered supervisory in nature, they were grouped under the heading of curriculum, because they directly affected in most cases what was taught in a non-public school, and frequently stated the level at which something should be taught. Some of the statutes were very specific, and indicated how much school time should be given to a specialized area. An example of a specific curriculum requirement from a statute could be the provision of the Wisconsin statutes which requires 15 minutes per week of instruction on dairy products and their value. Other statutes were much more general and required simply that the common branches of learning be taught, or required a general course of study. The most frequent provisions in the statutes were requirements for civics, American or state history, patriotic matters, instruction in the Constitutions, or general subjects related to the heritage of the United States. The statutes of 36 states included at least one reference to curriculum requirements in non-public schools.

Table VIII. The data in Table VIII were concerned with provisions related to the general welfare of pupils and teachers in non-public schools. Included were provisions related to fire drills, safety regulations, health regulations, and provisions designed to promote the general welfare of all citizens of the state. The statutes of 36 states mentioned non-public schools specifically in provisions designed to promote the general welfare, health, and safety of society.

TABLE VII

STATE STATUTORY PROVISIONS RELATED TO NON-PUBLIC SCHOOLS CONCERNED WITH CURRICULUM REQUIREMENTS

State	Citation	Topic
Alabama	Tit. 52, Ch. 11, Sec. 297 and Sec. 299	Common branches
Alabama	Tit. 52, Ch. 30, Sec. 545	U.S. Constitution
Alabama	Tit. 52, Ch. 33, Sec. 555	Physical education
Arkansas	Tit. 80, Ch. 16, Sec. 80-1613 to Sec. 80-1614	American history
California	Ed. Code, Sec. 7901-Sec. 7904	U.S. history, California history, Constitutions
Colorado	Ch. 123, Sec. 123-21-8 to Sec. 123-21-9	Federal Constitution
Connecticut	Tit. 10, Ch. 164, Sec. 18	U.S. citizenship
Delaware	Tit. 14, Ch. 41, Sec. 4104	Constitutions
Florida	Tit. 15, Ch. 247, Sec. 247.16	General provisions
Idaho	Tit. 33, Ch. 1, Sec. 118	Course of study
Idaho	Tit. 33, Ch. 16, Sec. 1602	Patriotic subjects
Indiana	Tit. 28, Ch. 14, Sec. 28-1409; Sec. 28-1413; Sec. 28-1414	Physical education
Indiana	Tit. 28, Ch. 34, Sec. 28-3406; Sec. 28-3406a	Constitutions
Indiana	Tit. 28, Ch. 34, Sec. 28-3425; Sec. 28-3426	Safety education
Indiana	Tit. 28, Ch. 34, Sec. 28-3428	Moral instruction
Iowa	Tit 12, Ch. 280, Sec. 280.3	Course of study

TABLE VII (Continued)

State	Citation	Topic
Iowa	Tit. 12, Ch. 280, Sec. 280.6	Citizenship
Iowa	Tit. 12, Ch. 280, Sec. 280.7	Constitutions
Iowa	Tit. 12, Ch. 280, Sec. 280.8	History, government
Kansas	Tit. 72, Art. 11, Sec. 1103	History, government
Kentucky	Tit. 13, Ch. 158, Sec. 158.080	English required, common branches
Maine	Ch. 41, Sec. 11, VII	American history, civics, geography of Maine
Maine	Ch. 41, Sec. 144	Morality, patriotism, truth
Maryland	Art. 77, Ch. 3, Sec. 26	Distributed courses of study
Maryland	Art. 77, Ch. 7, Sec. 90	Alcohol, narcotics
Maryland	Art. 77, Ch. 7, Sec. 98	National anthem
Maryland	Art. 77, Ch. 29, Sec. 289-Sec. 290	Physical education
Michigan	Sec. 15.1951; Sec. 15.3361-Sec. 15.3362	Civics, Constitutions
Minnesota	Ch. 126, Sec. 06	Constitution and Declaration of Independence
Missouri	Tit. 11, Ch. 163, Sec. 163.200 to Sec. 163.240	Constitutions, American history
Montana	Tit. 75, Ch. 29, Sec. 75-2901; Sec. 75-2904	Common branches in English
Nebraska	Ch. 79, Art. 4, Sec. 79-4,122 and Sec. 79-4,123	Fire prevention

TABLE VII (Continued)

State	Citation	Topic
Nebraska	Ch. 79, Art. 2, Sec. 79-213 to Sec. 79-215	American citizenship, history, patriotism, Constitutions, governmental ideologies, patriotic exercises, moral and character education
Nebraska	Ch. 79, Art. 17, Sec. 79-1701 to Sec. 79-1707	General curriculum
Nevada	Tit. 34, Ch. 392, Sec. 049; Sec. 070; Sec. 150	Constitutions
Nevada	Tit. 34, Ch. 394, Sec. 130	Course of study
New Hampshire	Tit. 15, Ch. 189, Sec. 189:10	Constitutions, Declaration of Independence
New Hampshire	Tit. 15, Ch. 189, Sec. 189:19	Common branches
New Jersey	Tit. 18, Ch. 19, Sec. 18:19-3; Sec. 18:19-5; Sec. 18:19-6	Fire prevention
New Jersey	Tit. 18, Ch. 19, Sec. 18:19-8; Sec. 18:19-9	Constitutions
New York	Ed. Law, Sec. 801	Patriotism, citizenship, historic documents
New York	Ed. Law, Sec. 803	Physical training
New York	Ed. Law, Sec. 804-a	Narcotics, drugs
New York	Ed. Law, Sec. 806	Traffic regulations
New York	Ed. Law, Sec. 808	Fire prevention
New York	Ed. Law, Sec. 3204	Equivalent instruction, 12 common branches, communism, history

TABLE VII (Continued)

State	Citation	Topic
North Carolina	Ch. 115, Sec. 115-166	General
North Carolina	Ch. 115, Sec. 115-255	Course of study
North Dakota	Ch. 15-34, Sec. 15-34-03(1)	Common branches
North Dakota	Ch. 15-38, Sec. 15-38-08	U.S. Constitution
Oregon	Tit. 30, Ch. 336, Sec. 336.230	U.S. Constitution
Pennsylvania	Tit. 24, Ch. 1, Sec. 7-771	Patriotic exercises
Pennsylvania	Tit. 24, Ch. 1, Sec. 13-1327	Prescribed courses
Pennsylvania	Tit. 24, Ch. 1, Sec. 15-1518 (a)(b)	Fire Prevention
Pennsylvania	Tit. 24, Ch. 1, Sec. 16-1605(a)	Constitutions, American history, Patriotism
Rhode Island	Sec. 16-19-2	Reading, writing, geography, arithmetic, history, and constitution of R.I. and U.S.
Rhode Island	Sec. 16-21-7	Health education
Rhode Island	Sec. 16-22-2	Prescribed course of study in government
Rhode Island	Sec. 16-22-4	Physical education
South Dakota	Tit. 15, Ch. 15.10, Sec. 15.1006; Sec. 15.1008	State course of study
South Dakota	Tit. 15, Ch. 15.31, Sec. 15.3104; Sec. 15.3105	Constitutions, Moral instruction, patriotism, citizenship, history, alcohol and narcotics

TABLE VII (Continued)

State	Citation	Topic
Tennessee	Tit. 49, Ch. 19, Sec. 49-1904	American history and government
Texas	Civ. Stat., Tit. 49, Ch. 18, Art. 2893(1); Pen. Code, Tit. 7, Art. 298	Citizenship
Utah	Tit. 53, Ch. 1, Sec. 53-1-1;	U.S. Constitution
Washington	Ch. 28.02, Sec. 28.02.080; Ch. 28.05, Sec. 28.05.050	Constitutions, history, government
West Virginia	Ch. 18, Art. 2, Sec. 1733, Sec. 1734	Fire prevention, prescribed history, constitution courses
Wisconsin	Ch. 40, Sec. 40.46(9)	Dairy products
Wisconsin	Ch. 40, Sec. 40.46(10)	Historic documents, Constitutions, patriotic subjects

TABLE VIII

STATE STATUTORY PROVISIONS RELATED TO NON-PUBLIC SCHOOLS CONCERNED WITH GENERAL WELFARE OF PUPILS AND TEACHERS

State	Citation	Topic
Alaska	Tit. 14, Ch. 05, Sec. 320	Emergency drills
Alaska	Tit. 14, Ch. 30, Sec. 070	Physical examinations
Arizona	Tit. 36, Sec. 105-13	Health standards
Arkansas	Tit. 80, Ch. 18, Sec. 80-1821 and Sec. 80-1823	Bus drivers
California	Ed. Code, Sec. 12001-Sec. 12002	Fire drills
California	Ed. Code, Sec. 12081	Access gates
California	Health and Safety Code, Sec. 3700	Drinking cups
Florida	Tit. 15, Ch. 247, Sec. 247.01	Purposes
Hawaii	Tit. 6, Ch. 38, Sec. 38-10	Tuberculosis
Illinois	Ch. 122, Sec. 742; Sec. 744; Sec. 746	Tuberculosis
Indiana	Tit. 28, Ch. 5, Sec. 28-512	Indigent children
Iowa	Tit. 5, Ch. 100, Sec. 31	Fire drills
Iowa	Tit. 12, Ch. 299, Sec. 299.11	Truants
Kansas	Tit. 72, Art. 45, Sec. 72-4601; Sec. 72-4605	Door openings
Kentucky	Tit. 21, Ch. 259, Sec. 259.200	Animal law
Maine	Ch. 41, Sec. 55	Tuberculosis
Maryland	Art. 77, Ch. 32, Sec. 305, Sec. 309	Solicitation

TABLE VIII (Continued)

State	Citation	Topic
Massachusetts	Tit. 12, Ch. 69, Sec. 30A	Loyalty oath
Massachusetts	Tit. 12, Ch. 69, Sec. 55B	Tuberculosis
Massachusetts	Tit. 20, Ch. 143, Sec. 15; Ch. 148, Sec. 28(J)	Fire regulations
Michigan	Sec. 15.1961; Sec. 15.1963; Sec. 15.1966	Construction, fire regulations
Michigan	Sec. 15.3376	Immunization
Minnesota	Ch. 126, Sec. 15, Subd. 1	Safety patrols
Mississippi	Tit. 12, Ch. 3, Sec. 2781	Eminent domain
Mississippi	Tit. 25, Ch. 5, Sec. 7008-Sec. 7010	Fire regulations
Montana	Tit. 75, Ch. 23, Sec. 75-2301; Sec. 75-2302	Fire regulations, instruction
Nevada	Tit. 34, Ch. 394, Sec. 170	Fire drills
Nevada	Tit. 34, Ch. 394, Sec. 180	Trespassing
Nevada	Tit. 34, Ch. 394, Sec. 190	School buses
Nevada	Tit. 34, Ch. 423, Sec. 220	Wards of state
Nevada	Tit. 41, Ch. 467, Sec. 170	Athletic commission
New Hampshire	Tit. 15, Ch. 189, Sec. 189:33	Health reports
New Hampshire	Tit. 15, Ch. 191, Sec. 191:1	Subversive doctrine
New Hampshire	Tit. 15, Ch. 200, Sec. 200:1	Vaccinations
New Hampshire	Tit. 15, Ch. 200, Sec. 200:15-Sec. 200:24	School physicians
New Jersey	Tit. 18, Ch. 19, Sec. 19:19-1	Corporal punishment

TABLE VIII (Continued)

State	Citation	Topic
New Jersey	Tit. 40, Ch. 55, Sec. 40:55-33.1	Zoning
New Mexico	Tit. 73, Art. 12, Sec. 73-12-11	Communicable diseases
New York	Ed. Law, Sec. 807; Sec. 807-a; Sec. 808	Fire drills, inspections
New York	Ed. Law, Sec. 912	Health services
New York	Ed. Law, Sec. 3002	Oath of allegiance
North Carolina	Ch. 130, Sec. 130-87; Sec. 130-91; Sec. 130-92	Immunization
North Carolina	Sec. 130-170	State Board of Health
Ohio	Tit. 33, Ch. 3313, Sec. 3312.74 (A)(B)	Zoning restriction
Oregon	Tit. 30, Ch. 336, Sec. 336.340	Fire Drills
Oregon	Tit. 30, Ch. 342, Sec. 342.620; Sec. 342.625	Oath of allegiance
Pennsylvania	Tit. 18, Ch. 2, Sec. 4329	False alarms
Pennsylvania	Tit. 24, Ch. 1, Sec. 13-1303	Vaccination
Pennsylvania	Tit. 24, Ch. 1, Sec. 13-1355	Compliance with laws
Pennsylvania	Tit. 24, Ch. 1, Sec. 14-1401 to Sec. 14-1403	Dental, medical inspections
Pennsylvania	Tit. 24, Ch. 1, Sec. 15-1518 (a)(B)	Fire drills
Pennsylvania	Tit. 53, Ch. 38, Sec. 14402; Ch. 91, Sec. 48206	Health regulations
Pennsylvania	Tit. 53, Ch. 141, Sec. 66101	Eminent domain

TABLE VIII (Continued)

State	Citation	Topic
Rhode Island	Sec. 16-21-3	Facilities standards
Rhode Island	Sec. 16-21-4; Sec. 16-21-5	Emergency drills, fire code
Rhode Island	Sec. 16-21-7	Health program
Rhode Island	Sec. 16-21-14	Examinations
Rhode Island	Sec. 16-38-2	Vaccination
South Dakota	Tit. 15, Ch. 15.38, Sec. 15.3813	Physical examinations
South Dakota	Tit. 15, Ch. 15.99, Sec. 15. 9911	Disturbances
South Dakota	Tit. 31, Ch. 31.04C, Sec. 31. 04C01	Fire inspection
South Dakota	Tit. 31, Ch. 31.04C, Sec. 31. 04C03	Construction standards
Texas	Tit. 42, Ch. 7, Art. 2135	Jury service
Texas	Tit. 71, Ch. 4, Art. 4477, Rule 30	Communicable diseases
Vermont	Tit. 16, Ch. 1, Sec. 4	Loyalty oath
Virginia	Tit. 22, Ch. 2, Sec. 22.21	Building occupancy
Virginia	Tit. 32, Ch. 3.1, Sec. 32-50; Sec. 32-59; Sec. 32-60	Communicable diseases, common cup, common towel
Virginia	Tit. 35, Ch. 3, Sec. 35-25(1)	Food services
Washington	Ch. 46.48, Sec. 46.48.160	Safety patrols
Wisconsin	Ch. 40, Sec. 40.47	Fire drills, first aid kits

TABLE VIII (Continued)

State	Citation	Topic
Wisconsin	Ch. 40, Sec. 40.57	Insurance on buses
Wisconsin	Ch. 53, Sec. 53.32	Jails
Wisconsin	Ch. 176, Sec. 176.05(9n)	Liquor licensing
Wyoming	Ch. 169, Sec. 169.22(1)	Athletic commission

Table IX. The data in Table IX were concerned with statutory provisions related to public aid in various forms to non-public schools. Some provisions promoted aid to the school directly, others promoted aid to the school indirectly through benefits to the pupils and/or their parents, and some specifically prohibited certain types of aid to schools, children, or their parents. Payment or provision in some form for transportation of pupils was a frequent form of indirect aid. Examples of more direct aid were found in the tuition grants, scholarships, education grants, and/or contracts which were permitted and utilized in several states. The statutes of 36 states included at least one provisions related to aid in some form for patrons, pupils, or non-public schools.

Table X. The data in Table X were concerned with provisions in the state statutes which were related to non-public schools in a variety of miscellaneous matters. Included in the listings in Table X were all of those provisions which were not clearly concerned with, or limited to, the other table classifications of supervision, curriculum requirements, general welfare or public aid for non-public schools. Thirty-five of the states included at least one provision in the statutes which were concerned with miscellaneous matters and non-public schools.

TABLE IX

STATE STATUTORY PROVISIONS RELATED TO NON-PUBLIC SCHOOLS CONCERNED WITH AID TO NON-PUBLIC SCHOOLS

State	Citation	Topic
Alabama	Tit. 52, Ch. 4B, Sec. 61(16)-Sec. 61(18); Sec. 61(20)-Sec. 61(21)	Tuition payments
Alabama	Tit. 52, Ch. 14, Sec. 362	Retirement benefits
Arkansas	Tit. 80, Ch. 15, Sec. 80-1539; Sec. 80-1541; Sec. 80-1543	Tuition grants
California	Ed. Code, Sec. 30103	Testing program
Colorado	Ch. 123, Sec. 123-10-43; Sec. 123-10-44	Transportation
Connecticut	Tit. 10, Ch. 172, Sec. 281	Transportation
Connecticut	Tit. 10, Ch. 219, Sec. 412(i)	Tax Exemption
Florida	Tit. 15, Ch. 237, Sec. 247.01-Sec. 247.20	State board created
Georgia	Tit. 32, Ch. 32, Sec. 813; Sec. 815	Education grants
Illinois	Ch. 122, Sec. 22-10	Sectarian aid
Illinois	Ch. 122, Sec. 29-4	Transportation
Illinois	Ch. 122, Sec. 712.1-Sec. 712.2; Sec. 712.6	School lunch
Indiana	Tit. 28, Ch. 3, Sec. 28-318	Surplus commodities
Indiana	Tit. 28, Ch. 28, Sec. 28-2805	Transportation
Indiana	Tit. 28, Ch. 33, Sec. 28-3306	School houses
Indiana	Tit. 28, Ch. 51, Sec. 28-5146	School lunch

TABLE IX (Continued)

State	Citation	Topic
Kansas	Tit. 72, Art. 6, Sec. 72-619	Transportation
Kansas	Tit. 72, Art. 53, Sec. 72-5327	School lunch
Kentucky	Tit. 11, Ch. 141, Sec. 141.040	Tax exemption
Kentucky	Tit. 13, Ch. 157, Sec. 157.170	Book sales prohibited
Kentucky	Tit. 13, Ch. 158, Sec. 158.100(4)	Contracting allowed
Kentucky	Tit. 13, Ch. 158, Sec. 158.115	Transportation
Louisiana	Tit. 17, Ch. 1, Sec. 153	Contracting prohibited
Louisiana	Tit. 17, Ch. 1, Sec. 158	Transportation
Louisiana	Tit. 17, Ch. 1, Sec. 351-Sec. 352	School books and supplies
Louisiana	Tit. 17, Ch. 18, Sec. 2951-Sec. 2959	Tuition grants
Maine	Ch. 17, Sec. 10, VI, XVI	Tax exemptions
Maine	Ch. 41, Sec. 105	Contracting permitted
Maine	Ch. 41, Sec. 107-Sec. 108	Tuition and board payments
Maine	Ch. 41, Sec. 126-Sec. 128	Tuition auditing
Massachusetts	Tit. 12, Ch. 71, Sec. 7A; Ch. 76, Sec. 1	Transportation
Massachusetts	Tit. 17, Ch. 123, Sec. 11 and Sec. 13A	Research
Massachusetts	Tit. 22, Ch. 161, Sec. 108	Transportation fares
Michigan	Sec. 9.2511	Driver education

TABLE IX (Continued)

State	Citation	Topic
Michigan	Sec. 15.1927; Sec. 15.3366	Primary fund prohibited
Michigan	Sec. 15.3366; Sec. 15.3590; Sec. 15.3592; Sec. 15.3600	Transportation
Mississippi	Tit. 24, Ch. 5, Sec. 6658.02	Textbooks
Mississippi	Tit. 39, Ch. 1, Sec. 9697(d)	Tax exemption
Missouri	Tit. 11, Ch. 164, Sec. 164.010	Transportation
Montana	Tit. 75, Ch. 34, Sec. 75-3408	Transportation purchased
Montana	Tit. 82, Ch. 31, Sec. 82-3101	Surplus property
Nevada	Tit. 34, Ch. 396, Sec. 540	Teacher scholarships
Nevada	Tit. 34, Ch. 333, Sec. 490	Surplus property
Nevada	Tit. 58, Ch. 704, Sec. 140	Common carriers
New Hampshire	Tit. 15, Ch. 189, Sec. 189:9	Transportation
New Hampshire	Tit. 15, Ch. 194, Sec. 194:22; Sec. 194:23a-Sec. 194:23d	Contracting
New Jersey	Tit. 18, Ch. 14, Sec. 18:14-8	Transportation
New Mexico	Ch. 73, Art. 1, Sec. 73-1-7; Art. 18, Sec. 73-18-11	Textbooks sold
New Mexico	Ch. 73, Art. 7, Sec. 73-7-36	Transportation
New York	Ed. Law, Sec. 912	Health services
New York	Ed. Law, Sec. 1714	Contracts
New York	Ed. Law, Sec. 2021.19, Sec. 3635	Transportation
New York	Ed. Law, Sec. 3207	Indigent children

TABLE IX (Continued)

State	Citation	Topic
North Carolina	Ch. 115, Sec. 115-274 to Sec. 115-276; Sec. 115-278(3); Sec. 115-282; Sec. 115.285; Sec. 115-286; Sec. 115-287; Sec. 115-289	Education grants
North Dakota	Ch. 15-34, Sec. 15-34-07	Transportation
Ohio	Tit. 33, Ch. 3315, Sec. 3315. 33	Scholarships
Oregon	Tit. 30, Ch. 327, Sec. 327. 515; Sec. 327.520; Sec. 327. 530	School lunch
Oregon	Tit. 30, Ch. 338, Sec. 338.060	Transportation
Pennsylvania	Tit. 24, Ch. 1, Sec. 13-1337	School lunch
Rhode Island	Sec. 16-3-3	Services permitted
Rhode Island	Sec. 16-8-7 to Sec. 16-8-11	School lunch program
Rhode Island	Sec. 16-21-2	Transportation
Rhode Island	Sec. 16-21-9	School physician
Rhode Island	Sec. 16-22-9	Testing
South Dakota	Tit. 15, Ch. 15.19, Sec. 15. 1901	Institutes
Tennessee	Tit. 49, Ch. 2, Sec. 49-231	Contracts permitted
Texas	Tit. 49, Ch. 19, Art. 2899	Sectarian aid prohibited
Vermont	Tit. 16, Ch. 3, Sec. 146(b)(1)	Book sold
Vermont	Tit. 16, Ch. 5, Sec. 202(7); Ch. 21, Sec. 793(b); Sec. 798; Sec. 799; Sec. 800; Sec. 804; Sec. 805	Academy Tuition

TABLE IX (Continued)

State	Citation	Topic
Vermont	Tit. 16, Ch. 31, Sec. 1381-Sec. 1382	Health inspection
Vermont	Tit. 16, Ch. 55, Sec. 1931(v)	Retirement benefits
Vermont	Tit. 16, Ch. 79, Sec. 2534	Town scholarships
Virginia	Tit. 22, Ch. 4, Sec. 23-38.1	Teacher scholarship credit
Virginia	Tit. 22, Ch. 73, Sec. 22.115.29 to Sec. 22-115.37	Private school scholarships
Virginia	Tit. 22, Ch. 13, Sec. 22-294.1 to Sec. 22-294.3	Transportation
Virginia	Tit. 23, Ch. 1, Sec. 23-7.1(1)(4)	War scholarships
Virginia	Tit. 51, Ch. 3.2, Sec. 51-111.38:1 to Sec. 51-111.38:3	Retirement system
Virginia	Tit. 58, Ch. 1, Sec. 58-19.1 to Sec. 58.19.5	Tax credits
West Virginia	Ch. 11, Art. 3, Sec. 678	Tax exemption
West Virginia	Ch. 18, Art. 5, Sec. 1782(2)	Indigent, textbooks
Wyoming	Ch. 8, Sec. 1, Sec. 21-323 to Sec. 21-325	School lunch

TABLE X

STATE STATUTORY PROVISIONS RELATED TO NON-PUBLIC SCHOOLS CONCERNED WITH MISCELLANEOUS MATTERS

State	Citation	Topic
Arkansas	Tit. 64, Ch. 14, Sec. 1401-Sec. 1414	Incorporation
Arkansas	Tit. 80, Ch. 5, Sec. 80-518	Rental of public school buildings
Arkansas	Tit. 80, Ch. 16, Sec. 80-1604	Flag display
California	Ed. Code, Sec. 7511	Language credit
California	Ed. Code, Sec. 10751	Confidential information
California	Ed. Code, Sec. 10851-Sec. 10853	Hazing forbidden
California	Govt. Code, Sec. 431(d)	Flag display
California	Mil. and Vet. Code, Sec. 530	Military Commissions
Connecticut	Tit. 10, Ch. 545, Sec. 46	Zoning
Delaware	Tit. 14, Ch. 41, Sec. 4108	Election days
Delaware	Tit. 29, Ch. 21, Sec. 2108	Arbor day, Bird day
Delaware	Tit. 29, Ch. 55, Sec. 5530	Retirement credit
Florida	Tit. 15, Ch. 232, Sec. 232.42	Secret societies
Florida	Tit. 15, Ch. 247, Sec. 247.01-Sec. 247.20	Approval
Florida	Tit. 34, Ch. 623, Sec. 623.01-Sec. 623.14	Incorporation
Georgia	Tit. 32, Ch. 32, Sec. 809	Rental of public school buildings

TABLE X (Continued)

State	Citation	Topic
Hawaii	Tit. 6, Ch. 38, Sec. 38-1; Ch. 40, Sec. 40-1	Definitions
Hawaii	Tit. 6, Ch. 38, Sec. 38-3	Certification experience
Hawaii	Tit. 6, Ch. 40, Sec. 40-6	Establishment
Idaho	Tit. 33, Ch. 39, Sec. 2901; Sec. 3909; Sec. 3910	Regulation of incorporations
Illinois	Ch. 95½, Sec. 3-801.7	Bus registration
Indiana	Tit. 25, Ch. 32, Sec. 3201; Sec. 3211; Sec. 3219; Sec. 3227; Sec. 3236	Incorporation
Iowa	Tit. 12, Ch. 280, Sec. 280.2	Definition
Iowa	Tit. 12, Ch. 280, Sec. 280.5	Flag
Kansas	Ch. 72, Art. 1, Sec. 72-123	Information
Kansas	Ch. 353, Sec. 2, L.K. 1961	Flag
Kentucky	Tit. 13, Ch. 156, Sec. 156. 230(1)	Annual list
Kentucky	Tit. 13, Ch. 158, Sec. 158. 140	Admission to high school
Louisiana	Tit. 17, Ch. 15, Sec. 2801-Sec. 2831	Incorporation
Maine	Ch. 41, Sec. 122-Sec. 124	Property transfers
Maine	Ch. 54, Sec. 5	Property holdings
Massachusetts	Tit. 17, Ch. 119, Sec. 69	Court wards
Massachusetts	Tit. 22, Ch. 167, Sec. 24	School savings
Michigan	Sec. 15.1922	Definitions

TABLE X (Continued)

State	Citation	Topic
Michigan	Sec. 21-170-Sec. 21.178	Incorporation
Mississippi	Tit. 21, Ch. 4, Sec. 5351(d)	Property purposes
Missouri	Tit. 11, Ch. 168, Sec. 168. 050	Certificate requirements
Nevada	Tit. 34, Ch. 394, Sec. 010	Definitions
New Hampshire	Tit. 15, Ch. 189, Sec. 189:17	Flag
New Hampshire	Tit. 15, Ch. 190, Sec. 190:1+	Teacher education
New Jersey	Tit. 15, Ch. 11, Sec. 15:11-1 to Sec. 15:11-20; Ch. 14, Sec. 15:14-1 to Sec. 15:14-11; Tit. 16, Ch. 1 to 19, Sec. 16:1-1 to Sec. 16:19-9	Incorporation
New Jersey	Tit. 18, Ch. 19, Sec. 18:19-7	Definition
New York	Ed. Law, Sec. 216-Sec. 217	Incorporation
New York	Rel. Corp. Law, Sec. 6	Incorporation, property
North Carolina	Ch. 115, Sec. 115-166	Records required
Ohio	Tit. 33, Ch. 3313, Sec. 3313.80	Flag display
Oklahoma	Tit. 18, Sec. 14-541 to Sec. 14-573	Corporations
Oklahoma	Tit. 25, Sec. 5-157	Flag display
Oregon	Tit. 30, Ch. 61, Sec. 005 to Sec. 990	Incorporation
Pennsylvania	Tit. 24, Ch. 1, Sec. 7-771	Flag display
Pennsylvania	Tit. 24, Ch. 10, Sec. 2731	Definitions
Rhode Island	Sec. 16-20-1	Legal holidays

TABLE X (Continued)

State	Citation	Topic
Rhode Island	Sec. 16-40-1	Incorporations
Tennessee	Tit. 48, Ch. 1, Sec. 48-102	Incorporations
Texas	Tit. 49, Ch. 9B, Art. 2654-7, Sec. 2a	Credit given
Texas	Tit. 49, Ch. 22, Art. 2922(17)	Contribution recognized
Vermont	Tit. 16, Ch. 21, Sec. 791(7)	Academy defined
Vermont	Tit. 76, Ch. 23, Sec. 904	Lincoln's birthday
Washington	Ch. 24.08, Sec. 24.08.010 to Sec. 24.08.900	Corporations
West Virginia	Ch. 35, Art. 2, Sec. 3502-Sec. 3506	Corporations
Wisconsin	Ch. 40, Sec. 40.47	Flag required, Pledge of allegiance
Wisconsin	Ch. 40, Sec. 40.90	Diploma privilege
Wisconsin	Ch. 182, Sec. 182.028	Corporations

CHAPTER V

PARENTAL RIGHTS, RESPONSIBILITIES, AND LIABILITIES INVOLVED IN THE OPERATION OF NON-PUBLIC SCHOOLS

The operation of any non-public school involves at one time or another, in various ways, the parents of the children attending the school. The relationship between the parent and his child, and the school the child attended produced much litigation between the parents acting as representatives of their minor children and the non-public school in which their children were enrolled. Another source of litigation was the relationship between public school representatives and the parents who chose non-public schools for their children. Several courts have been asked to arbitrate disputes between attendance officials and parents whose children did not attend public schools.

The parent, as natural guardian of the child, inherently possesses certain rights regarding the child and his education. The relationship of the child to his parent placed a definite responsibility on the parent to meet certain moral and legal responsibilities. Exercise of his parental rights and responsibilities often placed a legal liability upon the parent. The three topics concerned with non-public school matters: The rights of parents, responsibilities of parents, and liabilities of parents, were discussed in this chapter. These matters involving parents of non-public school children have been adjudicated in many courts. Summaries of the opinions of the courts in these various matters were included below.

I. RIGHTS OF PARENTS

The rights which parents may exercise regarding non-public schools involved, generally, the right to choose a school, the right to exercise some control over the education of their children within any school, and the right to expect a certain level of performance in the schools their children attend.

The Right to Choose a School. Compulsory education laws require a parent to make a choice regarding the kind of school to which he will send his child. Upholding the right of a parent to have his child educated in the way he determined best, the Indiana Supreme Court in 1904 defined a suitable school as any place where instruction is regularly and properly given to the young, even if it were one pupil with one teacher in a home situation. The court upheld the right of the parent to choose how he would meet compulsory education requirements with these words: "We do not think that the number of persons, whether one or many, make a place where instruction is imparted any less or more a school." The court continued by stating that the purpose of the compulsory attendance law was

> to secure to the child the opportunity to acquire an education. . . . the result to be obtained, and not the means or manner of obtaining it, was the goal which the lawmakers were attempting to reach. The law was made for the parent, who does not educate his child, and not for the parent who employs a teacher and pays him out of his private purse, and so places within the reach of the child . . . an education equal to that obtainable in the public schools of the state.[1]

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[1] _State v. Peterman_, 32 Ind. App. 665, 70 N.E. 550 (1904).

In 1908 the U.S. Supreme Court held that Sioux Indians living on the reservations had a definite right to choose the kind of education they desired for their children, including religious education. The monies held in trust by the government for the Indians could be expended for the support of religious schools, according to the Court, as the parents were exercising their right to expend their money for the education of their children in the manner which they as parents deemed as most suitable.[2]

The United States Supreme Court was asked in 1925 to decide whether a state could through its voters require all parents to send their children to the public schools. The state of Oregon, in 1922, passed a Compulsory Education Act which made attendance at a public school mandatory. The Society of Sisters, operators of religious schools, and the Hill Military Academy filed suit against Pierce, governor of Oregon, to prevent the enforcement of the law. The trial court issued a restraining order, and the state officials, desiring to enforce the statute, appealed to the U.S. Supreme Court. The Court in declaring the Oregon Act unconstitutional emphasized that

> . . . the act . . . unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. . . . The fundamental theory of liberty upon which all governments in this union reposed excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.[3]

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[2] Ruben Quickbear v. Leupp, 210 U.S. 50, 28 S.Ct. 690, 50 L.Ed. 954 (1908).

[3] Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925).

The right of parents to choose the education they desire for their children has been reiterated by many state courts. A Pennsylvania court, for example, stated that a parent may elect to send his child to a "qualified school," or even to a qualified private teacher or tutor.[4] A New York court emphasized that parents have the right to have their children educated elsewhere than the public schools, as long as the state's minimum educational requirements are met.[5] The U.S. Supreme Court affirmed this opinion when it dealt with the New York plan of released time from public schools for religious instruction.

In the late 1950's and early 1960's the matter of the parental right to choose a school for one's children was litigated by the religious group known as the "Old Order Amish." In the state of Ohio the conflict between requirements of the compulsory attendance laws and the religious precepts of the Amish, which required a certain type of schooling, appeared before various courts several times. The problem was not easily solved by the Ohio courts or the legislature.

In State v. Hershberger[6] in 1955, the court found the defendant guilty of failure to send his children to school, as his children were sent to a private religious school which did not meet the statutory requirement of providing instruction equivalent to the public schools. The court did not deny the right of the parent to choose a school, but cautioned that "If a child is sent to a private school such school must provide instruction equivalent to the free instruction furnished in the public schools." The court emphasized that the defendant's right to have his children instructed in the tenets of his chosen faith was unquestioned. The lack of qualified teachers, instructional facilities, and curricula were used as evidence to determine that the education being provided in the Amish schools was not "equivalent" to that of the public schools. The standards of the public schools were rejected by the Amish as being worldly and in conflict with their religious beliefs.

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[4] Connell v. Board of School Directors of Kennett Township, 356 Pa. 585, 52 A. 2d 645, App. dism., 332 U.S. 748, 68 S.Ct. 26, 92 L.Ed. 335. (1947).

[5] Zorach v. Clauson, 303 N.Y. 161, 100 N.E. 2d 463, Affirmed 343 U.S. 306, 72 S.Ct. 679, 96 L.Ed. 954 (1951).

[6] 144 N.E. 2d 693 (Ct. of App., Hardin Co., 1955).

Following the Hershberger case the efforts to force Amish parents to send their children to approved schools increased. The issue reached the Ohio Supreme Court in 1961 in State v. Glick.[7] The court was asked to enjoin the operation of certain private schools operated by the Amish in order to prevent the attendance of children in such schools. The court also was asked to direct the Amish parents to send their children to the public schools of the district or to a private school conforming to state minimum standards, and to schools wherein teachers were employed who met the state minimum requirements. It was charged that the operation of sub-standard schools constituted a public nuisance and that the Amish were engaged in a conspiracy to subvert the morals of their children.

The court in refusing to grant an injunction to prevent the operation of the Amish schools observed that

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[7] 172 Ohio St. 249, 175 N.E. 2d 68 (1961).

> The respondents have a legal right to operate nontax-supported private schools paid for by them. They have the legal right, protected by the Constitution, to worship God according to the dictates of their own conscience and to teach in their church and in their schools the tenets of their faith.

Maintaining the right of the parents to choose the schooling for their children the court concluded with these words:

> There is no evidence that the operation of these two schools by the respondents according to the tenets of their faith and their convictions has led to the commission of crime or to juvenile delinquency by their children or has been in any way injurious to society or to the private citizens with whom the respondents or their children have come in contact.

The Ohio situation, according to the court, appeared to be that religious denominations have a right to operate parochial schools, but that children attending such schools are violating compulsory attendance laws if the instruction is not "equivalent to" that provided by the public schools.

The Right to Exert Control Over a Child's Education. The courts have not only upheld the right of parents to choose the type of school which they wish their children to attend, but the courts generally have enunciated the right of parents to exert a more direct control over their children's education. Not only does this parental right enable the parent to choose the school, but the right of the parent to exercise some control over the child's curriculum has been substantiated for both public and non-public school pupils.

In discussing this right of parents an Oklahoma court indicated that

> The parent . . . has a right to make a reasonable selection from the prescribed course of study for his child to pursue, and this selection must be respected by the school authorities, as

> the right of the parent in that regard is superior to that of the school officers and the teachers.[8]

A Nebraska court supported the right of parents to choose courses for their children from a list provided. The court stated that the school authorities' power to prescribe is not unlimited and that the school should maintain due regard for the wishes and natural and legal rights of the parents of the children.[9] The right of the parent to control the education of the child is complete unless modified by statutes or danger to society is involved.[10] However, if the proposed teachings are subversive of morality or decency, the state may limit such teachings.[11]

It has been generally held that the state may require every child to be educated. In Vollmar,[12] a Colorado court stated that

> . . . . The right to conduct a private school, the right of parents to have their children taught where, when, how, what and by whom they may judge best, are among the liberties guaranteed by section 1 of the 14th Amendment of the United States Constitution . . . . subject to the qualifications . . . that teachers and places must be reputable and the things taught not immoral or inimical to the public welfare . . . .

The court continued in its opinion in Vollmar that

> . . . the right of the parents to select, within limits, what their children shall learn, is one of the liberties granted by

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[8] School Board Dist. No. 18, Garvin County v. Thompson, 24 Okla. 1, 103 P. 578, 24 L.R.A. (NS) 221, 138 Am. St. Rep. 861, 19 Ann. Cas. 1188 (1909).

[9] State ex. rel. Kelley v. Ferguson, 95 Neb. 63, 114 N.E. 1039, 50 L.R.A. (NS) 266 (1914).

[10] 39 Am. Jur., Parent and Child, Sec. 49.

[11] Denton v. James, 107 Kan. 729, 193 P. 307, 12 A.L.R. 1146 (1920).

[12] Vollmar v. Stanley, 81 Colo. 276, 255 P. 610 (1927).

> the . . . Constitution, and of which therefore, no state can deprive them.

When the selection of studies comes into conflict with requirements of the state schools, according to the opinion of Vollmar, the parental right is superior. The court said that

> The parent has a constitutional right to have his children educated in the public schools . . . also . . . to direct within limits, his children's studies. The school board, though with full power to prescribe the studies, cannot make the surrender of the second a condition of the enjoyment of the first. They cannot say to him, "You have a constitutional right to deny your child the study of biology, and you have a constitutional right to have him taught in the public schools, but, if you are admitted to the latter, we shall deny you the former.

In Vollmar a minority of the court was of the opinion that the only way this parental right could be exercised was through the use of private schools. However, the majority opinion supported the idea that parents could exercise choice of curriculum in both public and non-public schools.

The right of parents to choose studies, such as language, for their children in especially established schools was upheld by the U.S. Supreme Court in Farrington v. Tokushige[13] when it observed that "The . . . parent has the right to direct the education of his own child without unreasonable restrictions. . . ." The Court declared unconstitutional statutory provisions which would destroy most foreign language private schools because the statutory provisions went

> . . . far beyond mere regulation of privately supported schools, where children obtain instruction deemed valuable by their parents, and which is obviously not in conflict with any public interest. . . .

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[13] 273 U.S. 284, 47 S.Ct. 406, 71 L.Ed. 646 (1927).

The court explained that the questioned statutes

> . . . give affirmative direction concerning the intimate and essential details of such schools, intrust their control to public officers, and deny both owners and patrons reasonable choice in respect of teachers, curriculums, and textbooks.

The Right to Expect Certain Conditions. Operation of a non-public school places a responsibility on the operator to meet certain expectations of the patrons of the school. There were litigated in the courts several issues which emphasized the parental right to expect certain conditions when enrolling their children in a particular school.

In 1824 a New York court said that although it had no power to visit and supervise a school, a contract should meet the requirements stipulated in the charter of the institution. The parent had a right to expect that charter conditions would be met within the school.[14] A Missouri court[15] indicated that parents may rightfully expect that a teacher who contracts to furnish instruction will undertake to furnish school room accommodations and furnish reasonably suitable facilities. The Missouri court held that "A contract for instruction of a pupil implies the furnishing of school rooms and facilities reasonably fit for the purposes intended as well as professional qualifications of the teaching staff." The court continued to describe what one can expect of a person offering professional services when it said that

> It is a rule applicable to every learned profession, . . . and . . . teaching, that he, who is engaged in the practice of it . . . and undertakes . . . to exercise a reasonable degree of skill

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[14] Auburn Academy v. Strong, Hopk. Ch. 278 (N.Y., 1824).

[15] Barngrover v. Maack, 46 Mo. App. 407 (1891).

> and judgement and ordinary care and diligence in the rendition of such services.

A Tennessee court affirmed that a non-public school master had a definite right to preserve order and decorum in the school, and to punish students for an infraction of the rules. Parents, however, have a right to expect that infliction of cruel and unusual punishments will not be used, nor can the school master purely by virtue of his office exercise discretionary quasi judicial powers.[16]

A California Supreme Court has agreed that parents have a right to expect non-public school authorities to follow their instructions regarding students leaving the school premises. When a child was injured in an automobile accident off the campus of the school, and the parents had stipulated that the child was not allowed to leave the campus, the school was held liable because the injuries resulted from its negligence.[17]

According to a Georgia court, a parent may assume that a private military academy will shield and protect the child from injury. A discus struck a student who was walking on a path normally used for passage by students. The court indicated that the school must supervise such dangerous activity so all students will be protected from injury. The school was held liable for the injuries to the student.[18]

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[16] Phillips v. Johns, 12 Tenn. App. 354 (1930).

[17] Brokaw v. Black-Foxe Military Institute, 216 P. 2d 53 (Cal., 1950), subsequent opinion, 37 Calif. 274, 231 P. 2d 816, (1951).

[18] Marques v. Riverside Military Academy, Inc., 87 Ga. 370, 73 S.E. 2d 574 (1952).

II. RESPONSIBILITIES OF PARENTS

In addition to the rights accorded to parents, there are certain responsibilities which parents must exercise in relation to their children and non-public schools. Applying to parents generally, whether the public schools or non-public schools are utilized, is the responsibility to educate their children. Attendance at a non-public school involves on the part of the parent of the student the responsibility to encourage and require the student to obey the rules and regulations of the school. Finally, entering into financial agreements with a non-public school involes the meeting of certain responsibilities by the parent.

The Responsibility to Educate. Generally, the weight of authority maintains that it is the responsibility of a parent to provide a common education for his children. According to one authority "Nearly all the states now enforce this obligation by compulsory laws."[19] The responsibility to educate also involves a certain level of quality of education. In 1893 a Massachusetts court stated that a child must be educated in an approved school.[20] The court indicated that if the child is not in a public school or an approved private school it becomes the responsibility of the parent to demonstrate that the child is receiving a satisfactory education. The court concluded its opinion by stating that

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[19] 39 Am. Jur., Parent and Child, Sec. 48.

[20] Commonwealth v. Roberts, 159 Mass. 572, 34 N.E. 402 (1893).

> Sending a child to a private day school approved by the school committee is enough to comply with the requirement of the law without further inquiry. . . . If a person . . . prefers to have him instructed otherwise, it will be incumbent on him to show that the child has been instructed for the specified period in the required branches of learning. . .

The responsibility of parents to educate their children properly has been reiterated by many courts. An Alabama Court stated that "The law imposes . . . the duty and obligation to maintain and educate his minor children in a manner commensurate with his means. . . ." upon the father, even though the children may have means of their own.[21] A Georgia court emphasized that legal rights of parents over their children are not absolute, and that the parents have the responsibility to educate, care for, and protect their children.[22]

In meeting their responsibility to educate, parents usually have a choice between the public schools, an approved private school, or possibly home instruction. A California court held that detailed prescription of standards at approved private schools, or prescription of detailed standards for approved home instruction to meet compulsory attendance requirements, was not a deprivation of the constitutional rights of parents ". . . to determine how and where their children should be educated."[23] The court explained in its 1954 opinion that

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[21] Farmer v. Coleman, 231 Ala. 527, 165 So. 778 (1936), reiterated in Scott v. Scott, 247 Ala. 598, 25 So. 2d 673 (1946).

[22] Rhodes v. State, 76 Ga. App. 667, 47 S.E. 2d 293 (1948).

[23] People v. Turner, 121 Cal. App. 2d 861, 263 P. 2d 685 (1953), App. Dism., Turner v. People of State of California, 347 U.S. 972, 74 S.Ct. 785, 98 L.Ed. 1112 (1954).

> . . . only eleven of the forty-eight states permit by statute that instruction may be given at home by their parent or tutor . . . such home instruction moreover is specifically conditioned except in two states . . . and we have been unable to find a single case in which it has been held that so-called compulsory attendance statutes are rendered unconstitutional and void merely by reason of failure to recognize home instruction as an alternative to attendance in the public schools.

The Responsibility to Comply with Regulations. Entrance into a particular non-public school, if utilized by parents and pupils to meet their responsibility to educate, involves the responsibility of compliance and conformity to the regulations of that institution. A Vermont court indicated that powers and authority of private school teachers may be somewhat autocratic. Rules, regulations, and course of study may be determined by the authorities of private schools and those who attend these schools must comply with the rules, regulations, and course of study.[24]

In a leading North Carolina case, Teeter v. Horner Military Academy,[25] the court held that continued misconduct on the part of the pupil meant that he could be expelled and the school did not have to refund the tuition payment. The regulations of the school provided that "any cadet who shall disobey the command of the principal or of any professor . . . or other superior officer, or behave himself in a refractory or disrespectful manner shall be expelled, or . . . punished." The school catalog contained a provision which stated that ". . . the discipline is not severe, but firm and decided, and no boy will be retained who does not cheerfully comply with the rules and regulations. . . ." The young man, Teeter, persisted in misconduct, was expelled, and his father sued the school for a refund of tuition. The court denied the refund and stated that

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[24] Lander v. Seaver, 32 Vt. 114, 76 Am. Dec. 164 (1859).

[25] 165 N.C. 564, 81 S.E. 767 (1914).

> If need be, punishment for the refraction of the rules may extend to the dismissal of the pupil who violated them. . . . It seems imperative and essential to the welfare of the school that the power should reside in the teacher to suspend the offender at once. . . . The teacher is responsible for the discipline of his school, and for the progress, conduct, and deportment of his pupils. It is his imperative duty to maintain good order, and to require of his pupils a faithful performance of their duties . . . there are cases of misconduct for which punishment is an inadequate remedy. If the offender is incorrigible, suspension or expulsion is the only adequate remedy.
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> . . .There is an implied promise, if it is not expressed, that the pupil who has entered the school will comply with . . . reasonable rules and regulations, and may be dismissed . . . for failing to do so.

Many courts have reiterated the sentiments expressed in Teeter. As in Miami Military Institute v. Leff,[26] several courts have indicated that schools may enforce reasonable regulations by expulsion and suspension. In Miami Military Institute entrance to the school required that the pupils at the private military school attend daily religious exercises at the school chapel. The court upheld the right of the school to require chapel attendance as a condition to remain in the school.

The Responsibility for Financial Agreements. The responsibility for financial contracts or liabilities of parents was treated more fully in the following section. However, certain responsibilities have been placed definitely upon parents.

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[26] 129 Misc. 481, 220 N.Y.S. 799 (1927).

In a Pennsylvania case[27] the parent was held responsible to pay complete charges for the term because the parent had asked the proprietor of the school to reserve a place for the student. The proprietor reserved a room for the boy, the boy attended for one day, and did not return. The court held that the parent was required to reimburse the proporietor for the tuition, board, and room costs, because the proprietor could not give the place to another because of the reservation.

An Illinois court stated that when a parent enters a contract for the admission of a child to a non-public school, and the application states that it is subject to the terms of a printed catalog, the contract's financial agreements are enforceable if the school maintains its contracted agreements and conditions as stated in the printed catalog.[28] A Pennsylvania court summarized the situation with a statement that ". . . a student and his parents are bound by terms of the enrollment certificate and the school catalog."[29]

III. LIABILITIES OF PARENTS

It was indicated by several courts that parents have certain rights regarding their children's education and it was also indicated by the courts that parents have certain responsibilities. This section dealt with the liabilities, primarily for financial obligations, that parents may incur in providing for the education of their children in non-public schools.

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[27] Swavely v. Eno, 54 Penn. Super. Ct. (1913).

[28] Northwestern Military and Naval Academy v. Wadleigh, 267 Ill. App. 1 (1933).

[29] Brett v. Perkioman School, 47 D & C 691, 59 Montg. 167 (Pa. Com. Pl., 1943).

Contracts for tuition, room, and board were the subject of much litigation. Another matter which was often litigated was the matter of reasonable rules and regulations as part of the terms of the contract for instruction. In Curry v. Lassel Seminary Co.,[30] the court held that when a child was sent to the school agreeing to be bound by stipulations in the catalog that the child not be absent from school except at recess time, the parent was liable for board and tuition, even though the child was dismissed for infraction of the rule.

Another early related case held that a school catalog statement that "no money would be returned" if a student was expelled should be upheld and the parent was required to pay the agreed-upon amount to the school, even though it had not been paid in advance, as was usually required.[31] In other cases where a student was dismissed for alleged insubordination,[32] or sickness prevented attendance,[33] or violation of a rule concerned with hazing resulted in dismissal,[34] the principle was upheld that parents were liable for full contract costs even though the pupils only attended the schools for a portion of the time.

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[30] 168 Mass. 7, 46 N.E. 110 (1897).

[31] Horner School v. Wescott, 124 N.C. 518, 32 S.E. 885 (1899).

[32] Manson v. Culver Military Academy, 141 Ill. App. 250 (1908).

[33] Vidor v. Peacock, 145 S.W. 672 (Tex. Civ. App., 1912); Fisher v. Hicks, 277 S.W. 799 (Tex. Civ. App., 1926).

[34] Kentucky Military Institute v. Bramblet, 158 Ky. 205, 164 S.W. 808 (1914).

Contracts for board, lodging, and instruction at private schools for a specified time are generally not divisible. When a pupil of a private school engaged in a secret marriage, and was expelled from the school as a result, the court held that the person paying for the young lady's tuition was not entitled to recover any part, as a condition of the contract might be considered that she remain unmarried to attend a girls' school.[35] In another case, a father signed a contract for enrollment of his daughter for a whole year and withdrew the daughter because she was not happy in the school. Even though the father did not pay all of the tuition in advance, he was held liable for the whole amount because of the contract provisions.[36]

A mother was considered liable, by an Illinois court, for tuition costs, because of her written letter of application, which became part of the contract.[37] When parents agree to certain conditions in a contract which stipulates that expulsion for infraction of rules would result in no loss of financial obligation to the school, the courts have upheld the right of the schools to recover full costs,[38] even though the child does attend the school for the full instructional period.

A somewhat differing view of the parents' liability to pay for the contract for tuition and costs was presented by the Arkansas Supreme

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[35] Hall v. Mount Ida School for Girls, 258 Mass. 464, 155 N.E. 418, 50 A.L.R. 1495 (1927).

[36] Van Brink v. Lehman, 199 App. Div. 784, 192 N.Y.S. 342 (1922).

[37] Culver Military Academy v. Staley, 250 Ill. App. 531 (1929).

[38] Hoadley v. Allen, 108 Calif. App. 468, 291 P. 601 (1930); Head v. Theis, 106 N.J. 281, 150 A. 191 (1930).

Court in 1930.[39] When a child was withdrawn from school because of deteriorating eyesight the court held that because the parents were not aware of any other financial requirements, they were not liable for the remainder of the costs. The court pointed out that it was aware that in many jurisdictions the father would be held liable for the contract, but the court was of the opinion that when the father's daughter became incapacitated he was relieved of liability for tuition and board for the balance of the year.

More courts, however, have taken the view that parents are liable for the entire contract, regardless of the reasons for failure to execute all of the contracted instructional period. A District of Columbia court, although recognizing the principle that most contracts for instruction are indivisible, stated that when a school catalog indicated that a $25 per month credit would be given for board in case or protracted illness, the amount refunded was not arbitrary, even though actual cost of the board was greater.[40]

The parent is considered chargeable with knowledge of all provisions of a contract for instruction, when the contract provides that the parents must examine the catalogs, and thereby agree to the provisions. A parent was not relieved of liability for an expelled son's tuition because he claimed he had not read the catalog.[41] In a 1961 case a

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[39] Holton v. Cook, 181 Ark. 806, 27 S.W. 2d 1017, 69 A.L.R. 709 (1930).

[40] Bergman v. Bouligny, 82 A. 2d 760 (D.C. Mun. App., 1951).

[41] Heath v. Georgia Military Academy, 95 Ga. 245, 97 S.E. 2d 601 (1957).

Missouri court held a parent liable for a contract for instruction because the school could not fulfill its obligation to the child after the father removed the child from the school. The father argued that the school breached its contract by not providing instruction, but the court held that the father's withdrawal of the child made it impossible for the school to perform its obligation of the contract for instruction, and the father was liable for full payment.[43]

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[43] Missouri Military Academy v. McCollum, 344 S.W. 2d 636 (Mo. App., 1961).

CHAPTER VI

THE CORPORATE RIGHTS, RESPONSIBILITIES, AND LIABILITIES INVOLVED IN THE OPERATION OF NON-PUBLIC SCHOOLS

Non-public schools, when acting as corporate bodies, are usually regulated by the laws of the state in which they are located. Schools, existing as a collective body of teachers and a governing board, have definite rights, responsibilities, and liabilities. The concept of a corporate body, as used in this chapter, was not limited to corporations in the technical sense, although many non-public schools are formally incorporated bodies. Many issues have been litigated involving non-public schools as such corporate bodies. In this section, a discussion was presented of cases which have implications concerning the rights, responsibilities and liabilities of groups or individuals operating schools.

I. RIGHTS OF NON-PUBLIC SCHOOLS

The cases discussed in this section dealt primarily with the right of non-public schools to exist, rights of non-public schools in contracting (which was also dealt with in the previous chapter), and the rights of non-public schools in selecting students. Also treated in this section were the rights of property, and rights concerned with charter provisions.

The Right to Exist. The "Magna Carta" of non-public schools, which unqualifiedly gave and maintains for them the right to exist, was the 1925 case of Pierce v. Society of Sisters.[1] A law passed by the Oregon legislature in 1922 would have in effect eliminated non-public schools. The Court observed, however, that the schools were ". . .engaged in a kind of undertaking not inherently harmful, but long regarded as useful and meritorius." The law which would have made the existence of non-public schools impossible was declared unconstitutional.

A state court[2] summarized the right of existence of non-public schools when it indicated that the state maintains no monopoly in education but recognizes private schools teaching comparable branches and gives credit for attendance at a private school. The court emphasized that it was neither required nor expected that students be instructed exclusively within state schools.

An Iowa court dealt with the right of a non-public school to exist in a particular location.[3] Neighbors of a school charged that a school was actually a nuisance and operated in violation of zoning laws. The plaintiffs sought an injunction to restrain the operators of the school from continuing to operate in the residential area. The court indicated that it was not satisfied that the non-public school constituted a nuisance and stated that the nuisance charges must be proved, and suggested that the law would protect the non-public school as it would any other private party.

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[1] 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925).

[2] West v. Lee, 224 N.C. 79, 29 S.E. 2d 31 (1944).

[3] Livingston v. Davis, 242 Ia. 21, 50 N.W. 2d, 27 A.L.R. 2d 1237 (1951).

Zoning ordinances, which deal generally with the right of non-public schools to exist in certain areas, may not discriminate between public and non-public schools, according to several courts. When a zoning ordinance permitted public schools within a certain area, but not private schools, the court held that the ordinance was invalid, as it was unreasonable and no relation between its provisions and the general welfare could be determined.[4] A regulation which permitted public or church-related schools and not private military type schools was declared by a Minnesota court[5] arbitrary and therefore unenforceable. A zoning ordinance which required that property owners give their consent to the location of private schools within their residential area was declared unconstitutional by a New Jersey court.[6]

The Right to Contract. It has long been recognized that non-public schools may in their contracts make definite requirements upon students and their parents. Even so vague a provision in a contract as the "undesireable conduct of a student" may constitute grounds for expulsion.[7]

A non-public school may include in contracts provisions regarding a wide variety of matters. The catalog provisions of the school, agreements indicated on the written application for admission, and terms of acceptance by the school owner may be merged into a contract.[8] A New York court, in William v. Stein, following the lead of many other courts, sustained the right of schools to make their contracts entire and indivisible even though the student may not attend the school for the entire contract term.[9]

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[4] Miami Beach v. Lear, 128 Fla. 750, 175 So. 537, 36 A.L.R. 2d 656 (1937).

[5] State v. Northwestern Preparatory School, 228 Minn. 363, 37 N.W. 2d 370, 36 A.L.R. 2d 658 (1949).

[6] Yanow v. Seven Oaks Park, Inc., 11 N.J. 341, 94 A. 2d 482, 36 A.L.R. 2d 639 (1953).

[7] Fessman v. Seeley, 30 S.W. 268 (Tex. Civ. App., 1895).

In Matthews v. Riverside Academy[10] the court recognized that when a boarding school has limited facilities for the accommodation of students the school may contract with parents for the entire year in advance. The parent will be considered liable for the contract even if the child does not attend because "the engagement of teachers and other provisions for the management of the school are contracted for the entire year in advance." It was emphasized by the court that it was distinctly understood that the contract was not severable but was entire. The court ruled that the school was entitled to collect because it was not possible that the place vacated by the pupil be filled by the admission of another for the remainder of the year.

The right to contract extends to a selection of the person with whom the non-public school desires to contract, and with whom it may refuse to enter into a contract.[11]

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[8] William v. Stein, 100 Misc. Rep. 677, 166 N.Y.S. 836 (1917).

[9] Hitchcock Military Academy v. Meyers, 76 Cal. App. 743, 245 P. 219 (1926).

[10] 445 Ga. App. 30, 163 S.E. 238 (1932).

[11] Reed v. Hollywood Professional School, 169 Cal. App. 2d 887, 338 P. 2d 633 (1959).

The Right to Select. In non-public schools students are selected in various ways, and students do not enter by right as they do in public schools. A California court[12] distinguished between the responsibility that public schools have in prohibiting discrimination and the right that non-public schools have to discriminate, even though such discrimination may be repugnant to the policy of the state. The legislature in one state had provided that public policy in regard to discrimination in particular locations did not include private schools. In the litigation the court concluded that

> In our opinion private schools should be entitled to contract or refuse to contract with students of their choice for whatever reason if such contract or refusal does not fall within the constitutional or statutory proscription against discrimination on the basis of race or color. We do not find any authority that such refusal does so.

Non-public institutions may select whom they wish to admit for instruction. In 1898 A Maryland court[13] stated that refusal to admit colored persons is not a violation of the 14th Amendment. The New Mexico court[14] affirmed the right of private institutions to select when it stated that ". . . private institutions conducted . . . by . . . the sole owner for private gain . . . are supported wholly by tuition fees paid by the students accepted for instruction. . . ." The court held that the ". . . right to admission rested solely in the discretion of the . . ." owner.

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[12] Ibid.

[13] State ex. rel. Maryland Institute, 87 Md. 643, 41 A. 126 (1898).

[14] Kirkpatrick v. Williams, 53 N.M. 477, 211 P. 2d 506 (1949).

The Supreme Court of Kentucky imposed segregation on a non-public school with these words:

> The right to teach white and negro children in a private school at the same time and place is not a property right. Besides, appellant, as a corporation created by this state, has no natural right to teach at all. Its right to teach is such as the state sees fit to give it. The state may withhold it altogether, or qualify it.

The court concluded that it did not think a state statute requiring segregation in all schools, private as well as public, violated provisions of the U.S. Constitution.[15]

The United States Supreme Court[16] in a 3 to 2 decision affirmed the decision of the Kentucky court, and affirmed the right of the state to impose segregation on a private institution through the medium of statutes governing the charters of private corporations. However, the following words of Justice Harlan in the strong minority opinion were significant for non-public schools:

> I am of the opinion that, in its essential parts, the statute is an arbitrary invasion of the rights of liberty and property guaranteed by the 14th Amendment against hostile state action, and is, therefore void.
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> The capacity to impart instruction to others is given by the Almighty for beneficient purposes; and its use may not be forbidden or interfered with by government. . . . The right to impart instruction, harmless in itself or beneficial to those who receive it, is a substantial right of property. . . . If pupils, of whatever, race, — certainly, if they be citizens, — choose, with consent of their parents . . . to sit together in a private institution of learning while receiving instruction . . . no government . . . can legally forbid their coming together. . . . If the commonwealth of Kentucky can make it a crime to teach white and col-

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[15] Berea College v. Commonwealth, 94 S.W. 623 (Kentucky, 1906).

[16] Berea College v. Commonwealth, 211 U.S. 45, 29 S.C. 33, 53 L.E. 81 (1908).

> ored children together at the same time, in a private institution of learning, it is difficult to perceive why it may not forbid the assembling of white and colored children in the same Sabbath school, for the purpose of being instructed in the word of God . . . If the views of the highest court of Kentucky be sound, that Commonwealth may, without infringing the Constitution of the United States, forbid the association in the same private school of pupils of the Anglo-Saxon and Latin races respectively, or pupils of the Christian and Jewish faiths, respectively. Have we become so inoculated with prejudice of race that an American government, professedly based on the principles of freedom, and charged with the protection of all citizens alike, can make distinctions between such citizens in the matter of their voluntary meeting for innocent purposes, simply because of their respective races?

In its historic decision in Brown v. Board of Education of Topeka,[17] the Court mentioned Berea but limited the application of "separate facilities" being "inherently unequal" to public schools, and did not reverse Berea as far as non-public schools are concerned.

It is quite well established by these decisions that non-public schools may select who they will serve. Furthermore, a non-public school may select the area it wishes to serve. A private school in Illinois was challenged as to its right to conduct sessions in more than one county. The Supreme Court of Illinois[18] upheld the right of the school, if it met approved standards, to serve more than one county.

In 1844 the U.S. Supreme Court[19] dealt with the question of whom non-public schools may serve, or whom they may be required to serve. The question of whom non-public schools may allow to enter their property was also involved. One Stephen Girard provided in his will that a school for 800 male orphans be established, and indicated in his will that the school should be selective as to who could attend, teach in, or even visit the school. His words were:

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[17] Brown v. Board of Education of Topeka, 347 U.S. 483, 74 S.Ct. 686, 98 L.E. 879 (1954).

[18] Voisard v. Lake County, 271 Ill. App. 365, 169 N.E. 2d 805 (1961).

[19] Vidal v. Girard's Executors, 2 How. 127, 11 L.Ed. 205 (1844).

> I enjoin and require that no ecclesiastic, missionary, or minister of any sect whatsoever, will ever hold or exercise any station or duty whatever in the said college; nor shall any such person ever be admitted for any purpose, or as a visitor, within the premises appropriated to the purpose of said college.
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> In making this restriction, I do not mean to cast any reflection upon any sect or person whatsoever; but, as there is such a multitude of sects, and such a diversity of opinion amongst them, I desire to keep the tender minds of the orphans, who are to derive advantage from this bequest, free from the excitement which clashing doctrines and sectarian controversy are so apt to produce. . . .

Girard's relatives sued to set aside Girard's will, and engaged Daniel Webster as counsel. Webster argued that the exclusion of ministers and sectarian doctrines was an attack upon Christianity which was recognized by the law. The Court, however, upheld Girard's right, and the right of the school he founded, to exclude anyone it wished to exclude.

In 1956 the Supreme Court of Pennsylvania[20] was called upon to legally terminate Girard's trust. At this time the trust was challenged because under its terms only "white male orphans" could be admitted to the school. The school was considered a charitable trust, and the court held that private trusts for charitable purposes, not being subject to or controlled by the state are wholly beyond the orbit of the 14th Amendment, since no state action was involved. The trust was found to be valid, regardless of how limited the class of beneficiaries or the nature of the restrictions. The court concluded that

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[20] In Re Girard's Estate, 386 Pa. 548, 127 A. 2d 287 (1956).

> While it may seem unfortunate that the court is obliged to sanction the exclusion of any child from even a private school or orphanage because of race, creed, or color if otherwise entitled to admission, the Court is clearly of the opinion that the unanimous decision of the Orphan's Court . . . must be affirmed, it being clearly understood at the outset that the beneficiaries of the charity of Stephen Girard are not being determined by the State of Pennsylvania, nor by the city of Philadelphia, nor by this Court, but solely by Girard himself in the exercise of his undoubted right to dispose of his property by will, and in so doing to say, within the bounds of the law, who shall enjoy its benefits.

The Rights of Property. "The school is a private corporation, of which the state has no right to . . . take away the franchises or property without its consent," was the statement given by one authority[21] in summarizing the property rights of non-public schools. The commentator said that ". . . the power to regulate . . . private schools is subject to the same limitations as the power to regulate private property rights in general."

Almost one-hundred fifty years ago the United States Supreme Court was asked to protect the corporate property, both real and personal, the corporate seal, and the books of record of a private corporation, Dartmouth College,[22] from encroachment of the state legislature, which would have made the institution a state rather than a private institution. The Court declared that the action of the state in reorganizing the trustees was unconstitutional because the founders and donors to the college had given their property to be used in a certain way, which was sought to be changed by the imposition of a new state charter.

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[21] Prohibition and Regulation of Private Schools, 21 L.R.A. (NS) 53.

[22] Trustees of Dartmouth College v. Woodward, 4 Wheat. 518, 4 L.Ed. 629 (1819).

The Texas court[23] in 1894 protected the rights of a corporate body of trustees to buy, sell, and exchange property, as long as charter provisions were not violated. The right of corporate bodies to dispose of their property as they see fit was substantiated by several courts, including a Louisiana court in 1922.[24] A corporate charter usually preserves for a non-public school the right to hold property.[25] When a school extends to its faculty members "property" for the development of materials for teaching, the materials remain the property of the school.[26]

The Rights of Charter. The charter of an educational corporation determines to a large extent what it may or may not do. Chartered trusts set up in a variety of ways for the advancement of education and charitable purposes are considered valid.[27] If the educational corporation being established is a religiously oriented organization it is regulated by principles applicable to societies generally and the general rules which regulate other corporations.[28] If a school is a private corporation the ". . . state has no right to revoke or alter the charter or take away the franchise . . . without its consent, unless such right was reserved in the original charter."[29] The United States Supreme Court upheld the original charter provisions of non-public institutions in two important cases, Vidal v. Girard's Executors and the Dartmouth College case.

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[23] Trustees of Union Baptist Association v. Huhn, 26 S.W. 755 (Tex., 1894).

[24] Martin v. Louisiana Central Lumber Co., 150 La. 157, 90 So. 553 (1922).

[25] Wachovia Bank and Trust Co., et. al., v. Plumtree School for Boys, 229 N.C. 738, 51 S.E. 2d 477 (1949).

[26] Condel v. New School for Social Research, 48 N.Y.S. 2d 733 (1944).

[27] 10 Am. Jur., Charities, Sec. 63.

However, following the Dartmouth case most states adopted constitutional provisions permitting the alteration and revocation of corporate charters granted thereafter, and such constitutional provisions, have the effect of avoiding the result of the Dartmouth College case.

In the early 19th century a Massachusetts court[30] upheld the founding statutes and charter of an institution. The court upheld the right of an instructor to retain his position, unless he was duly removed according to statutes and charter provisions of the founder of the institution.

A Louisiana court[31] protected the right of a non-public school to maintain powers granted by prior statute and charter, unless the educational corporation was a public institution "in its strictest sense."

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[28] 45 Am. Jur., Religious Societies, Sec. 72.

[29] Prohibition and Regulation of Private Schools, 29 L.R.A. (NS) 53.

[30] In Re Murdock, 24 Mass. (7 Pick.) 303 (1828); Murdock v. Phillips Academy, 29 Mass. (12 Pick.) 244 (1831).

[31] Montepelier Academy v. George, 14 La. 395, 33 Am. Dec. 585 (1840).

A Minnesota court[32] protected the right of an outside religious body to elect trustees to a particular academy because of a charter provision of the corporation which required the election of trustees by the Baptist Convention. The court upheld the special legislation which provided for the charter of the school.

The rights of charter, as extended by a state or state agency, protect the non-public school's rights until such time as the charter is revoked.[33] A private school board may not dissolve itself, however, if the charter does not provide for dissolution of the corporation.[34]

II. RESPONSIBILITIES OF NON-PUBLIC SCHOOLS

Operators of non-public schools, whether individuals or corporate, have certain responsibilities to execute. In this section were discussed the responsibility the schools have to protect, the responsibility that non-public schools have to observe certain regulations, and the responsibility that the schools have to meet certain stated or implied obligations. A closely related topic, the liabilities of non-public schools was treated in the following section.

The Responsibility to Protect. Trustees of non-public schools have a responsibility to protect the interests of contributors. A

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[32] Minnesota Baptist Convention v. Pillsbury Academy, 246 Minn. 46, 74 N.W. 2d 286 (1955).

[33] Master's School v. Town of Greenburgh, 140 N.Y.S. 2d 399 (1955).

[34] School Board of Caldwell Parish v. Meredith, 139 La. 35, 71 So. 209 (La., 1916).

Mississippi court[35] held that when the trustees of a given institution receive property for educational purposes they must, when deeding the property to a municipality, insure that the intent of the original donor for the use of the property will be protected.

A New York court[36] held that absence of a teacher from the room was a proximate cause of injuries that one student sustained from a knife wielded by another student. The court held that if a teacher were properly present to supervise, the action of the assailant could have been averted, and sustained an award of damages of $1600.00. A Colorado court[37] in an action involving a shooting in a dormitory at a non-public school, however, ruled that the student's conduct in participating in "Russian roulette" constituted contributory negligence and the school was not held responsible, even though the school usually required that firearms be locked in a case.

The safety of students and visitors at non-public schools must be protected by the operators of such schools. An Oregon Court,[38] in a case wherein a student was injured when construction codes called for one-quarter inch plate glass and double strength glass was used instead, indicated that the jury must decide whether or not the school was negligent. According to evidence presented, plate glass was four times as strong, and was usually used in the area for construction in public buildings. The supreme court concluded that the student had ". . . the status of an invitee or business visitor. As such, the defendants owe him a duty of reasonable care in the construction and maintenance of the building."

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[35] Russell v. Town of Hickory, 124 Miss. 628, 87 So. 150 (1921).

[36] Christofides v. Hellenic Eastern Orthodox Christian Church of N.Y., 33 Misc. 2d 741, 227 N.Y.S. 2d 946 (1962).

[37] Smith v. McCabe, 145 Colo. 129, 358 P. 2d 1 (1960).

[38] Eberle v. Benedictine Sisters of Mt. Angel, 385 P. 2d 765 (Oregon, 1963).

The Responsibility to Observe Regulations. Those who operate or manage schools have a responsibility to observe regulations established by controlling bodies, charters, contracts, or other agencies.

If a charter requires that a majority of the persons interested control the property of the school, a minority of the persons cannot gain control of the property, deed, and charter against the will of the majority.[39]

Those operating schools have a responsibility to negotiate contracts for instruction, instructors, and other purposes, within the provisions of the charter. If a school does not fulfill charter requirements in contracting the courts may interfere to cancel contracts.[40]

A North Carolina court[41] indicated the importance of the responsibility of schools to enforce the observation of its own regulations by the following language:

> If need be, punishment for the refraction of the rules may extend to the dismissal of the pupil who violates them. . . . The teacher is responsible for the discipline of his school and for the pro-

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[39] Commonwealth v. Jarret, 7 Serg. and R. 460 (Penn., 1822).

[40] Auburn Academy v. Strong, Hopk. Ch. 278 (N.Y., 1824).

[41] Teeter v. Horner Military School, 165 N.C. 564, 81 S.E. 767 (1914).

> gress, conduct, and deportment of his pupils. It is his imperative duty to maintain good order and to require of his pupils a faithful performance of their duties. If he fails to do so, he is unfit for his position.

A California court[42] ruled that a military academy had a responsibility to demand payment for a contract for instruction soon after the payment was due. Waiting four years, and then beginning action for payment, "outlawed" the action because the statute of limitations barred it.

The responsibility of governing boards to observe the regulations of the charter of an institution was emphasized by a Tennessee court[43] in 1954. The corporation operating a school included in its charter agreement the stipulation that the trustees could not discharge the principal unless he resigned, or unless the principal was incapacitated physically or mentally and could not carry out his duties. The principal was relieved of duties, and sued for reinstatement. The court held that the trustees, by reason of the charter provisions, could not relieve him because of faculty disharmony and dissatisfaction of the trustees. The court emphasized that according to the charter, which was a contract between the corporation operating the school and the state of Tennessee, it was

> . . . compelled to declare Mr. Webb's status to be that of principal of Webb School, with the power and authority given him by the charter to select the instructors, to regulate the course of study and the method of discipline.

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[42] Stewart v. Claudius, 19 Cal. App. 2d 349, 65 P. 2d 933 (Cal., 1937).

[43] Webb v. Board of Trustees of Webb School, 38 Tenn. App. 173, 271 S.W. 2d 6 (1954).

The court concluded that

> The Charter clearly sets out that the defendants were not to have authority over the scholastic and disciplinary activities of the school unless by reason of death, resignation or other cause there should be no principal to manage or direct the school.
>
> The school has been conducted under the terms of the constitution above mentioned and articles of incorporation since 1921, and the defendants cannot now be heard to complain.

An Arkansas court[44] insisted that a school should follow its own regulations as stated in a catalog regarding dismissal. If a school catalog provided that the school reserved the right to dismiss any student for stated reasons without making specific charges, the school was limited to demanding withdrawal for those reasons.

The Responsibility to Meet Obligations. Operating a non-public school of any type involves implied or stated obligations, and the responsibility to meet such obligations. A teacher or non-public school, for example, who accepts students for tuition purposes, has a responsibility and obligation to furnish reasonably suitable facilities. A teacher who is employed to render services has an obligation to exercise reasonable skill and judgment, and ordinary care and diligence in rendering services.[45]

A Massachusetts court[46] indicated that trustees, when accepting the services of a principal and realizing that they were not intended to be gratuitous, incurred an obligation for his salary, even though the trustees opposed his continuance as principal.

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[44] Wentworth Military Academy v. B.O. Marshall, 225 Ark. 591, 283 S.W. 2d 868 (1955).

[45] Barngrover v. Maack, 46 Mo. App. 407 (1891).

[46] Dickey v. Trustees of Putnam Free School, 197 Mass. 468, 84 N.E. 140 (1908).

A Washington court[47] indicated that those operating a boarding school had a responsibility to provide food in sufficient quantity and of a wholesome character, and failure to provide such entitled the complainant to recover an amount to be determined by a jury. Another court[48] emphasized that a school has a responsibility to meet any special obligations it incurs through special arrangements. When a school accepts an individual on trial, and the "individual was compelled to leave, the school by accepting on trial, incurred an obligation to forego collection of a full year's tuition." A North Carolina court[49] indicated that a contract for board and lodging implied an obligation to furnish reasonably clean and wholesome board and lodging, and it was permissible to allow a jury to decide whether the quality provided was equal to quality implied in the contract. Another court held that catalog provisions implying that food was of highest quality, required the school to meet the obligations by providing highest quality.[50] Charges of fraudulant representation could be questions for the jury to decide.

If a private school contracts with an individual to provide a certain advanced course, it incurs an obligation to offer this course immediately.[51] The school may not expect the student to wait until it establishes a course, or the contract may be considered void.

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[47] Lyon v. Sparks, 61 Wash. 348, 112 P. 340 (1910).

[48] Chaplin v. Little Blue School, 110 Me. 415, 86 A. 838 (1913).

[49] Horner Military School v. Rogers, 167 N.C. 270, 83 S.E. 345 (1914).

[50] Mount Ida School v. Gillman, 96 Vt. 13, 116 A. 71 (1922); subsequent opinion, 97 Vt. 331, 123 A. 198 (1924).

A Tennessee court[52] emphasized in an opinion that those who operate schools have a responsibility to meet the standards expected of schools. Failure of a school to meet accredited standards as advertised prompted the court to point out when the parents were sued for tuition fees by the school that

> This record speaks very clearly the serious consequences to a young man from attending school for a full year, and then be denied credit for the work done by him by reason of the fact that the school in which he had confidence and the scholastic requirements of which he had fully met had not itself met the standards of education set up by other schools in the vicinity. Those who would maintain educational institutions are obligated to maintain them so as to inspire confidence in students and not to destroy confidence.

The parents were justified, the court said, in refusing to pay for the contracted instruction because the credit received for it was not transferable as promised. The court concluded that

> The son of complainant derived no practical benefit from the contract in question; complainant has already expended considerable money in the contract, all of which is a complete loss so far as attaining the object for which it was spent is concerned. Under these circumstances, we think there has been a failure of consideration within the meaning of the law so as to relieve complainant from further liability under the contract.

As was reported earlier, another court[53] reiterated that a non-public school has an obligation to assume responsibility for students according to agreements with parents. When parents express the desire that a student remain on the campus, if the school permits the child to leave, the school is guilty of negligence when the child is injured as a result of leaving.

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[51] Mount Ida School for Girls v. Kerr, 154 A. 565 (R.I., 1931).

[52] Torbett v. Jones, 19 Tenn. App. 307, 86 S.W. 2d 898 (1935).

[53] Brokaw v. Black-Foxe Military Institute, 216 P. 2d 53 (Cal., 1950); subsequent opinion, 37 Cal. 274, 231 P. 816 (1951).

III. LIABILITIES OF NON-PUBLIC SCHOOLS

The liabilities of non-public schools for injuries, negligence, contracts, and other matters have provided much litigation for consideration by the courts. According to some authority, the liabilities of non-public schools operated by religious organizations may be somewhat different than for other corporations[54] because charitable and religious organizations have been traditionally considered somewhat immune from some kinds of actions. If a school is considered a charitable organization it is probably liable for contracts and negligence just as any other organization.[55] The courts have presented many different views regarding tort liability of institutions operated as charities.[56] However, one court took the position that general doctrines or principles of law applying to contracts, trusts, and agreements apply to non-public schools.[57]

In a leading case in 1945[58] a young boy attended a school with the express understanding that he not leave the building unless accompanied by an attendant or a teacher. The young boy left the building unaccompanied and was injured on a neighbor's property. The court ruled that the school was not guilty of negligence, as charged, because the child left of his own accord. The matter of tort liability of private schools was treated following this case by one authority[59] in which many cases were discussed which supported liability for injuries to those who were injured, and many cases were cited which supported immunity from tort liabilitv for charitable educational trusts for a great variety of reasons.

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[54] 45 Am. Jur., Religious Societies, Sec. 75 - Sec. 77.

[55] 10 Am. Jur., Charities, Sec. 139.

[56] 10 Am. Jur., Charities, Sec. 140 - Sec. 151.

[57] Decell v. McKee, 83 Miss. 423, 35 So. 940 (1904).

[58] Conley v. Martin, 71 R.I. 35, 42 A. 2d 26, 160 A.L.R. 246 (1945).

In a California school a pupil slipped on an oil spot on a driveway and was injured.[60] In the resulting suit the court held that the presence of the oil or grease on the school driveway was not enough to establish negligence. An unreasonable accumulation might, if the jury so determined, be considered negligence on the part of the school. In a New York case,[61] the court concluded that when a child was pushed on the playground by another pupil and slipped on a banana peel, the school was not necessarily guilty of negligence in carelessly selecting teachers or providing inadequate supervision. A Florida court[62] agreed that a private school is required to furnish a reasonably safe place to play, and properly supervise it. However, a child's injury which could not have been prevented with any amount of supervision did not make the school liable for negligence. In another California case[63] a school was held not liable by the court for injuries to a student on a football field owned by the school. The court indicated that the school could not be held liable for negligence when requiring boys to pull weeds on Saturday as a disciplinary measure, and not providing supervision by a teacher. The school could properly place the boys "on their honor", according to the court. The fact that the boys engaged in other activities during which the injury occurred was not the fault of the school.

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[59] Tort Liability of Private Schools and Institutions of Higher Learning, 160 A.L.R. 250 *et. seq*.

[60] *Perbost et. al. v. San Marino Hall - School for Girls*, 88 Cal. App. 2d 796, 199 P. 2d 701 (1948).

[61] *Walter v. St. Michael's Roman Catholic Church*, 118 N.Y.S. 2d 852 (1953).

[62] *Hillman v. Greater Miami Hebrew Academy*, 72 So. 2d 668 (Fla., 1954).

Somewhat different opinions regarding the liability of non-public schools for injuries were held in several recent cases. In 1952 and 1953 there were at least three cases heard in which the non-public schools were held liable for injuries, Roman Catholic Church, Diocese of Tucson v. Keenan,[64] Marques v. Riverside Academy, Inc.,[65] and Bruno v. Employers Liability Assurance Corp.[66]

In the Roman Catholic Church v. Keenan case a child was injured when thrown from a merry-go-round onto a stack of pipe nearby. The court held that the school, even though a charitable educational institution, was liable for negligence resulting in injury. The Georgia court in Marques held that a private military institute was liable for injuries to a student from a discus resulting from a lack of preventive action on the part of the school. In Bruno a private Jesuit high school and its insuror were held liable for damages to adjoining property resulting from pile driving vibrations on the Jesuit property. The court found that the property of the neighbor was damaged, and that the school was responsible. Even though the school could do on its own property what it pleased, it could not deprive its neighbors of enjoyment of their own through damage, according to the court.

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[63] Martin v. Roman Catholic Archbishop of Los Angeles, 158 Cal. App. 2d 64, 322 P. 2d 31 (1958).

[64] 74 Ariz. 20, 243 P. 2d 455, Amended 74 Ariz. 76, 244 P. 2d 351 (1952).

[65] 87 Ga. App. 370, 73 S.E. 2d 574 (1952).

[66] 67 S. 2d 920 (La. App., 1953).

A federal district court[67] in 1958 held that when a child was old enough to be aware of and understand the danger of his own actions in an unsupervised chemistry laboratory he might contribute to his injuries to an extent that the school could not be held liable. The court found in this case that the making of gunpowder without the teacher's knowledge and supervision was the responsibility of the child, and the school was not guilty of negligence, putting it that, "An infant of the age of 14 years is presumed to have sufficient capacity to be sensible of danger and to have power to avoid it."

In a 1961 case in Missouri[68] the doctrine of charitable immunity for educational corporations was attacked by a student who had been injured by diving into a partially filled swimming pool. The school was charged with negligence in keeping the pool only partly filled, and in not providing proper supervision. The state supreme court held that in view of the failure or refusal of the legislature to limit charitable immunity, a charitable religious school was not liable for the alleged negligence, even though it carried liability insurance. The court concluded that public policy regarding something as important as charitable immunity should be found in constitutions, statutes, or court decisions, and not in the whims of individual judges.

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[67] Moore v. Order Minor Conventuals, 164 F. Supp. 711 (W.D.N.C., 1958).

[68] Schulte v. Missionaries of LaSallette Corporation of Missouri, 352 S.W. 2d 636 (Mo., 1961).

In 1963 a Wisconsin court[69] supported the removal of the immune status of religious educational institutions from liability for injuries with the following comments:

> Religious institutions today enjoy no immunity for breach of a higher degree of care than common-law negligence. . . .there were no reasons of public policy why the owner of a public building such as a church should not be held to the same standard of care in its construction and maintenance as any other owner of a public building. This rule has consistently been followed both as to religious institutions and charitable institutions. The core of this reasoning is an injured person should be indemnified and the nature of the owner of the public building furnishes no grounds for excusing a breach of the standard of care owed to the public.
>
> It is contended . . . immunity of religious societies is necessary and in public policy is justified in order not to hinder the good work of religious institutions. . . . There can be no quarrel with the argument the public benefits generally from the work or religious institutions. Although it is urged religion is essential and beneficial to mankind and ought to be encouraged, the question is whether the benefit to the many should be at the expense of the innocent sufferer of injuries caused by negligence of an agent of the religious institution. The argument transforms the innocent one into a victim suffering unwillingly the financial loss for the benefit of a religious institution and thus requiring such person to make a financial sacrifice to such institution. . . .

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[69] Widell v. Holy Trinity Catholic Church, 19 Wis. 2d 648, 121 N.W. 2d 249 (1963).

Certainly institutions teaching divine justice, the dignity of man and his obligations to his fellowman and his Creator would not claim on the basis of their teachings that they ought to be exempt from repairing the injury due by themselves or thus agents to another.

CHAPTER VII

STATE SUPERVISION AND CONTROL OF NON-PUBLIC SCHOOLS

The power of the state to supervise and control non-public schools has been a matter which the courts have been called upon to arbitrate on many occasions. The cases discussed below are concerned with supervision and control.

As was reported in Chapter III many state constitutions contained only a few provisions which relate to supervision of non-public schools. A large majority of the state constitutions included a provision that no money could be appropriated for sectarian schools, such as those provisions of the Nebraska[1] and Wyoming[2] Constitutions. The New York Constitution, however, added the familiar provision regarding sectarian aid and stipulated that no money may be used for private schools ". . . other than for examination and inspection. . . ."[3]

The statutes of the states, as reported in Chapter IV, contained more references to non-public schools than did the constitutions. There were some states, however, such as Wyoming, where there were no statutes which regulated, supervised, or controlled non-public schools to any extent. Other states, such as Colorado and North Dakota, provided for a minimum supervision of non-public schools. The Colorado statutes, for example, required only that the federal constitution be taught in all schools,[4] and indicated that census reports may be required but are not mandatory.[5] This statutory provision was typical of permissive legislation regarding non-public schools. Likewise, the North Dakota statutes only required that the federal constitution be taught[6] and stated that common branches of instruction must be taught in non-public schools if they are to be approved for compulsory attendance purposes.[7]

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[1] Neb. Const., Art. 7, Sec. 11.

[2] Wyo. Const., Art. 1, Sec. 19; Art. 3, Sec. 36; Art. 7, Sec. 7 - Sec. 9.

[3] N.Y. Const., Art. 11, Sec. 3.

Other states by statutory provisions instituted a somewhat strict control over the operation of non-public schools. The state of Michigan could be cited as an example. New York, by its statutes, exerted detailed control over curricular matters.[8]

The courts have been required to issue opinions regarding statutory and constitutional provisions concerned with supervision and control of non-public schools. Other matters, not treated in a particular state's substantive law, have been litigated in the courts. In this chapter of the study of the law and non-public schools court opinions on supervision and control of non-public schools were reviewed. Matters concerned with general regulations, the existence of non-public schools, encouragement of non-public schools, pupils, contracts, licensing of non-public schools, internal affairs of non-public schools, curriculum in non-public schools, instructors, and zoning regulations and non-public schools were treated in this chapter.

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[4] Colo. Rev. Stat., 1953, Ch. 123, Sec. 123-21-8; Sec. 123-21-9.

[5] Ibid., Sec. 123-21-14.

[6] N.D. Cent. Code Ann., Ch. 15-38, Sec. 15-38-08.

[7] Ibid., Ch. 15-34, Sec. 15-34-03(1).

[8] N.Y. Ed. Law, Sec. 801; Sec. 803; Sec. 804-a; Sec. 806; Sec. 807; Sec. 807-a; Sec. 808; Sec. 3204.

One authority in the field of school law, Robert R. Hamilton, said with Paul R. Mort, when discussing the need for supervision and control of non-public schools, that

> There is no doubt that the state can reasonably regulate all schools, public or private, examine and supervise them, and require that certain subjects be taught just as it may do in the case of public schools. There is no reason for forbidding attendance in private schools. If private schools do not measure up to the standard considered desirable by the state, the remedy is through regulatory legislation rather than the elimination of them.

Hamilton and Mort further stated that they were

> . . . of the opinion that the interest of the children in the state would best be served by requiring attendance at schools where the close supervision of instructional methods may be had, and where the children may gain the advantages of constant advances being made in the educational field.[9]

I. GENERAL REGULATION OF NON-PUBLIC SCHOOLS

General regulation of private schools, according to most authorities, is subject to the following provisions:

> It seems to be the rule . . . that the power to regulate or prohibit private schools is subject to the same limitations as the power to regulate private property rights in general, under constitutional provisions. . . .the legislature, under the police power, may regulate education in many respects.[10]

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[9] Robert R. Hamilton and Paul R. Mort, The Law and Public Education, Second Edition (Brooklyn: Foundation Press, 1959), pp. 507, 508.

[10] Prohibition and Regulation of Private Schools, 29 L.R.A. (N.S.) 53.

These sentiments were expressed by the Appellate Division of the Supreme Court[11] of New York in the following words:

> It will not be denied that education in general, and schools in particular, be they public or private, are matters of public concern warranting some regulatory legislation. The question presented relates to the scope and extent to which such regulation is permissive and in the Constitution. . . . It may well be that the power to regulate certain phases of private school operation, such as the nature of the curriculum, the qualifications of the teacher and the like, is a necessary and indispensable corollary to the State's supervisory jurisdiction over education in general.

The United States Supreme Court in its historic Pierce decision,[12] which denied the right of the legislature to arbitrarily close non-public schools, discussed the broader aspects of supervision, regulation, and control of non-public schools in the following words:

> No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, to supervise, and examine them, their teachers and their pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship be taught, and that nothing inimical to the public welfare be manifestly taught.

A Washington court[13] indicated in an opinion that a private school is of the same general character as a public school. A private school, according to this court, was one which was a regular, organized institution which made a business of instructing children in the required studies and for the term required by the laws of the state. The court maintained that ". . . the purpose and end of both public and private schools is the same." The court concluded that a parent who teaches his child at home does not maintain a school, and implied that a private school to be approved to meet compulsory attendance requirements must be similarly organized as its counterpart, the public school. Supervision of a general and regulatory nature must be permitted, in order to comply with the opinion.

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[11] Grow System School v. Board of Regents of Univ. of State, 98 N.Y.S. 2d 834 (1950).

[12] Pierce v. Society of Sisters, 268 U.S. 610, 45 S.Ct. 571, 69 L.Ed. 1070, 39 A.L.R. 468 (1925).

[13] State v. Counort, 69 Wash. 361, 124 P. 910, 41 L.R.A. (N.S.) 95 (1912).

A New York court[14] upheld the right of the state to examine and inspect non-public schools generally. The court pointed out that the state in so doing would not be aiding such schools in violation of the U.S. Constitution, but emphasized that the state would not be allowed to interfere with instruction in religious schools, wherein religious and secular education are combined.

The arguments in Pierce[15] used by the schools' counsel in defending their rights, and limiting the power of the state to legislate them out of operation, summarized the limitations that are legitimately placed on the states in regulating non-public schools. Counsel argued that "The conducting of schools is a useful occupation, secured and protected by the 14th Amendment to the Constitution of the United States," and that the Oregon law deprived the school societies of their rights to conduct primary schools, violated the right of parental control over children, abrogated the school's contracts with the state arising out of their charters, and could not be sustained as a legitimate police power of the state. The counsel concluded that "The legislative power of a state in relation to education does not involve the power to prohibit or supress private schools and colleges." Counsel for the schools emphasized that the parent has ". . . the common-law, or natural right to direct the education of the child. The state has no power to abrogate a vested right or to impair the obligation of contracts."

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[14] State v. Donahue, 202 App. Div. 656, 495 N.Y.S. 715 (1922).

[15] Ibid., 39 A.L.R. 471 - 473.

Under the police powers of the state, legislatures may generally regulate in many respects education in private schools, but, according to a 1960 opinion[16] the ". . . exercise of such power must not be arbitrary and must be limited to the preservation of public safety, public health or morals." In commenting upon the limitations of police powers the U.S. Supreme Court[17] observed that "Legislatures may not, under the guise of the police power, impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities." In State v. Williams the North Carolina court explained that the police powers to regulate and control education could apply to non-public schools. The court indicated that establishment of minimum standards and inspection was within the authority of the state.

The general requirement that non-public schools meet the state's minimum standards was stated by the New York Court of Appeals and affirmed by the U.S. Supreme Court in Zorach.[18] In dealing with a suit disputing loss of state approval, an Ohio court[19] made several statements which indicate the limits and extent of the state's general supervisory and regulatory control over non-public schools. The court said that

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[16] State v. Williams, 253 N.C. 337, 117 S.E. 2d 444 (1960).

[17] Seattle Trust Co. v. Roberge, 278 U.S. 116, 49 S.Ct. 50, 73 L.Ed. 210 (1928).

[18] Zorach v. Clauson, 303 N.Y. 161, 100 N.E. 2d 463 (1951), aff. 343 U.S. 306, 77 S.Ct. 679, 96 L.Ed. 954 (1951).

> . . . the control of schools, be they public or private, providing elementary and secondary education for the youth of Ohio reposes in the Legislature of our state. When the General Assembly speaks in matters concerning education it is exercising plenary power and its action is subject only to the limitations contained in the Constitution.

Some state courts have taken a rather opposite view and have suggested that various regulations apply only to public schools and do not apply to non-public schools when the statutes do not expressly include non-public schools. In discussing a statute which required that all children salute the flag and recite the pledge of allegiance in school a Massachusetts court[20] said that

> This statute is applicable only to public schools, though the Legislature must have known that many children of school age did not attend such schools. Moreover, no penalty is provided by such statute for the failure of pupils, even in the public schools, particularly with respect to instruction therein.

An Iowa court,[21] in a transportation case, emphasized that the boards of consolidated school districts are not required by law to exercise jurisdiction over private schools, except in a few situations as required by statutes. The court said

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[19] Board of Ed. of Aberdeen-Huntington Local School District v. State Board of Ed., 116 Oh. App. 515, 189 N.E. 2d 81 (1962), app. dism. 174 O.S. 291, 189 N.E. 2d 86 (1963).

[20] Commonwealth v. Johnson, 309 Mass. 476, 35 N.E. 2d 801 (1941).

[21] Silver Lake Consolidated School District v. Parker, 238 Iowa 984, 29 N.W. 2d 214 (1947).

> We believe the school laws of the State concern only the public schools unless otherwise expressly indicated, and do and can apply only to the schools within the purview of the school statutes, or under the control or jurisdiction of the school officials. . . .
>
> To place private schools upon the same basis as the public schools would open up a system of control of such private schools such as would tend to authorize the management and government of those schools by the state — a result in no way sought either by those in control of state public schools, or of the private schools.

A New Mexico court[22] in 1959 determined that private denominational schools were not included in the statutory phrase ". . . rural school rooms under the jurisdiction of the county school superintendent." When a county school superintendent, whose office was abolished, sued for his salary because he said private and denominational schools needed his supervision, the court held that schools were not subject to the supervision of a county superintendent of schools.

II. EXISTENCE OF NON-PUBLIC SCHOOLS

The Iowa court[23] when emphasizing that statutes pertaining to elementary schools, of a supervisory nature, do not apply to private schools, also indicated that the existence of private schools may be justified on the basis of the fact that they provide broader training, or provide more or less of some aspects of training than the public schools are required by law to provide. The particular case at bar involved zoning regulations. The court stated concerning the existence of non-public schools that "Schools have usually been held suitable in a residence zone, not detrimental thereto, and Courts have frowned on efforts to remove them therefrom."

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[22] Thomson v. Bd. of Cty. Com. of Bernalillo County, 66 N.M. 159, 344 P. 2d 171 (1959).

[23] Livingston v. Davis, 243 Iowa 21, 50 N.W. 2d 592, 27 A.L.R. 1237 (1951).

Justice Wolverton,[24] in discussing the existence of non-public schools and compulsory education requirements said:

> Compulsory education being the paramount policy of the state, can it be said with reason and justice, that the right and privilege of parochial and private schools to teach in the common-school grades is inimical or detrimental to, or destructive of that policy? Such schools and their patrons have the same interest in fostering primary education in the state, and appropriate regulations will place them under supervision of school authorities, so they will not escape the duty of proper primary instruction. No one has advanced the argument that teaching by these schools is harmful, or that their existence with the privilege of teaching in the grammar grades is a menace, or of vicious potency, to the state or the community at large, and there appears no plausible or sound reason why they should be eliminated from taking part in the primary education of the youth.

The Oregon law of 1922 essentially would have regulated out of existence all non-public schools. The U.S. Supreme Court in Pierce recognized that ". . . enforcement of the statute would seriously impair, perhaps destroy, the profitable features of the appellee's business and greatly diminish the value of their property." The Court emphasized that enforcement of the law would deprive the schools of their property and the owners of their livelihood unjustly and that this action would violate constitutional rights.

Earlier, in 189/, the U.S. Supreme Court had issued a statement which essentially prohibited acts of a state which would deprive an individual of his means of livelihood, which was what the enforcement of the statute challenged in Pierce would have done. In the Allgeyer[25] case the Court pronounced:

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[24] Society of Sisters v. Pierce, 296 F. 928 (D. Ore., 1924), affirmed Pierce v. Society of Sisters, Ibid.

> "Liberty" as used in the provision of the 14th Amendment, forbids the states to deprive any person of life, liberty, or property without due process of law, includes. . . .the right . . . to earn his livelihood by any lawful calling.

The principles of Pierce and Meyer, in which legislative attempts arbitrarily and oppressively to interfere with the liberty of individuals to pursue a lawful occupation were refuted as lacking due process of law, were reiterated by the U.S. Supreme Court[26] when it ruled that "Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the courts."

III. ENCOURAGEMENT OF NON-PUBLIC SCHOOLS

The states have encouraged education within their borders in various ways. The courts have given verbal support to non-public schools, and have concretely upheld taxation exemptions as a form of encouragement. This form of encouragement often included regulations of one type or other as a condition of tax exemption.

An early court of New Hampshire[27] indicated in 1871 that the general subject of education was a matter of public concern, to be cherished, regulated, and controlled by the state. The same court in 1902 supported the enforcement of compulsory attendance at some school with these words: "Since it is the duty of the legislature to diffuse knowledge and learning throughout the state, it is within their power to enforce school attendance to that end."[28] In State v. Jackson the court said that a statute requiring that every normal child attend a public school, or a private school approved by the board, is a "wholesome and reasonable" statute within the Constitution's provisions of granting the legislature's power to make reasonable and wholesome laws.

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[25] Allgeyer v. Louisiana, 165 U.S. 578, 17 S.Ct. 427, 41 L.Ed. 832 (1897).

[26] YuCong Eng. v. Trinidad, 271 U.S. 500, 46 S.Ct. 619, 70 L.Ed. 1059 (1925).

[27] Farnum's Petition, 51 N.H. 376 (1871).

In a Michigan case[29] in 1897 the secretary of state refused to file reincorporation papers for a non-public school until a franchise fee applicable to stock corporations was paid. The seminary argued that the franchise tax did not apply to non-public educational corporations. The court determined that the school was exempt with these words:

> It has always been the policy of this state, as indicated by the provisions of its constitution and a long line of legislative enactments to encourage the cause of education. Liberal provision has been made for the purpose of establishing and sustaining schools. A reading of the provisions of the franchise fee law, in connection with the existing laws in relation to educational institutions, makes it very clear that it was no part of the purpose of the legislature . . . to apply its provisions to educational institutions organized in the manner in which the relator was organized. . . .

In 1913 the Michigan supreme court[30] dealt with another case which was concerned with the encouragement of education and non-public schools. The court was asked to decide a case concerned with transportation and in sustaining the right of a district not operating a school to provide transportation costs the court said

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[28] State v. Jackson, 71 N.H. 552, 53 A. 1021, 60 L.R.A. 739 (1902).

[29] Michigan Female Seminary v. Secretary of State, 115 Mich. 118, 73 N.W. 131 (1897).

[30] Dennis v. Wrigley, 175 Mich. 621, 141 N.W. 605 (1913).

> Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. This language is taken from the ordinance of 1787. The reassertion of this doctrine after the lapse of more than a century and a quarter, coupled with the fact that legislation in this state has from the beginning been of the most liberal character, indicates a settled purpose on the part of the state to provide, foster, and protect educational facilities for all.

The matter of encouragement of education and non-public schools has taken a more concrete form in the matter of tax exemptions. Although the matter of aid, including tax exemption, is treated more fully in Chapter VIII, there are a few cases that were reported in this section.

A New Hampshire court[31] in 1876, summarized the encouragement of non-public education through tax exemption with the words:

> In discharge of the duty imposed upon the legislature to encourage education it has been their practice to exempt from taxation, without distinction of sect, denomination, or party, all houses of public worship, school houses, and seminaries of learning.

The principle of encouragement through tax exemption was reiterated by the New Hampshire court[32] when it indicated in 1940 that a proper exercise of the legislative power was aiding educational institutions by exempting them from taxation.

In 1962 an Arizona court[33] rendered a decision which gave encouragement to non-public schools as a state policy. A non-public, nonprofit educational institution paid real property taxes under protest for a period of years. When the school sued for recovery of the taxes paid the supreme court held that the school was indeed entitled to recover the taxes paid. The school, according to the court, enjoyed status as a nonprofit institution exempt from Federal income tax. The Arizona Constitution provides that property of educational institutions operated not ". . . for profit may be exempt from taxation by law. . . ." The Arizona statutes provide that real property of educational corporations used for educational purposes is exempt from taxation, ". . . but when such property is private property from which a rent or valuable consideration is received for its use it shall be taxed as other property."

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[31] Warde v. Manchester, 56 N.H. 508 (1876).

[32] Trustees of Phillips Exeter Academy v. Exeter, 90 N.H. 472, 27 A. 2d 569 (1940).

[33] Verde Valley School v. County of Yavapai, 90 Ariz. 180, 367 P. 2d 223 (1961).

The question before the court in this case was

> . . . whether a private, nonprofit educational institution, otherwise entitled to a real property tax exemption, is nevertheless disqualified by receipt of student tuition and fee charges (for room, board, and other services) for the reason that such charges constitute 'a rent or valuable consideration' within the meaning of the Arizona Revised Statutes. . . .

Although the court agreed with the tax officials that the laws exempting property from taxation should be strictly interpreted the court determined that:

> . . . it is also true it has always been the policy of this state to encourage the establishment of private educational institutions. And the principle of strict construction of exempting statutes should not be used to subvert that policy.
>
> We think the words 'rent or valuable consideration' refer instead to income received by such institutions for nonschool purposes . . . .the charges for room, board, etc., here complained of are but incidental to the nonprofit institution's educational purpose, accordingly, we hold that the words 'rent or valuable consideration' do not embrace tuition charges (whether or not apportioned to room, board, and other services) received by private nonprof-

it educational institutions.

> Nor is this conslusion altered by defendant's assertion that the tuition payments of necessity restrict admission to students of substantial means and that some or many of such students come from other states. There are no such restrictions or qualifications in and we will not read them into the statute in question.

The Arizona court expressed itself as being in accord with a federal court case,[34] in which the contention was made that the high fees necessary to enter a private school for girls made the school ineligible for tax exemption. The court rejected the contention with these words:

> Appellant urges, also, that many students in attendance at appellee's seminary are nonresidents of the District of Columbia and, further, that appellee accepts as students only those whose social and financial standing is acceptable to it. However, it is difficult to see what bearing this could have upon the question presented for decisions. There is no qualification, expressed or implied, in the statute favoring institutions which cater to all classes of persons or solely to residents of the District of Columbia. While tax exemption statutes should be strictly construed, that principle does not justify the interpolation of such qualifications into a statute, clear in its meaning, for the purpose of defeating the privilege granted.
>
> Perhaps it would be wiser for appellee to select its students on a basis of intelligence and previous training exclusively; perhaps not. But that is immaterial to the decision of the case. It is necessary in a democracy that all children, including those of the wealthy and the socially correct, shall be educated.

IV. SELECTION OF PUPILS IN NON-PUBLIC SCHOOLS

The matter of supervision by the state of the selection of students in non-public schools has been litigated in the courts on several occasions. Two matters particularly, compulsory vaccination and racial discrimination, have been dealt with by the courts in regard to state supervision of non-public schools.

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[34] District of Columbia v. Mt. Vernon Seminary, 100 F. 2d 116 (D.C. Cir., 1939).

In 1894 a Pennsylvania court[35] indicated that the school board of a city has power to adopt reasonable health regulations, and that excluding children from school who have not had a smallpox vaccination was a reasonable exercise of the authority vested in the school board. Enforcement by the school board of a city ordinance which provided that no pupil ". . . shall be permitted to attend any public or private school in the city without a certificate of a practicing physician that such child has been subjected to the process of vaccination" was considered reasonable on the part of the school board. The U.S. Supreme Court[36] in 1905 affirmed the right of a municipality to require that its citizens be vaccinated. In 1922 the U.S. Supreme Court[37] again dealt with the matter of compulsory vaccination. In question was a city ordinance of San Antonio, Texas, which provided ". . . that no child or other person shall attend a public school or other place of education without having first presented a certificate of vaccination." A young child, Zucht, was excluded, because of noncompliance, from the public school and later from a non-public school. The U.S. Supreme Court affirmed that ". . . it is within the police power of a state to provide for compulsory vaccination."

The right of school officials to demand vaccination has been upheld in many courts.[38] A state court[39] in justifying the health regulations imposed by school authorities stated that the laws may confer

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[35] Duffield v. School Dist. of City of Williamsport, 162 Pa. 476, 29 A. 742 (1894).

[36] Henning Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643 (1905).

[37] Zucht v. King, 260 U.S. 174, 43 S.Ct. 24, 67 L.Ed. 194 (1922).

> . . . the power upon the board of health to prevent . . . spread throughout the state by rule or order preventing unvaccinated persons from mingling with the other inhabitants of the state. . . The prevention or spread of contagious or infectious diseases by preventing unvaccinated persons from associating with the school children and schoolteachers of the state in no way infringes upon the constitutional right to attend the schools, or the management and control thereof by school boards or directors. It would not be contended that parents or guardians could send their children to school unclad and unfed. Other reasonable health regulations are just as important as food and clothing.

In the matter of racial discrimination the courts have allowed non-public schools more choice than in the matter of compulsory vaccination. In Vidal v. Girard's Executors,[40] the United States Supreme Court in speaking of a privately endowed educational institution, said that a donor could make any restrictions upon a gift in limitation of its recipients that he wished. Over one-hundred years later, a Pennsylvania court[41] was called upon to deal with the same educational trust, when the limitation of the benefits of the trust to "white male orphans" was challenged. The court said that any individual has a right to dispose of his own property as he sees fit. Private trusts for charitable purposes were not controlled by "state action," and such trusts were considered valid regardless of how limited were the beneficiaries.

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[38] Hartman v. May, 168 Miss. 477, 151 So. 737, 93 A.L.R. 1408 (1934).

[39] State v. Martin, 134 Ark. 420, 204 S.W. 622, 93 A.L.R. 1417 (1918).

[40] 2 How. 127 (U.S.), 11 L.Ed. 205 (1844).

[41] In Re Girard's Estate, 386 Pa. 348, 127 A. 2d 287 (1956).

In a Maryland situation the court[42] was asked to instruct non-public institutions to admit a Negro. The court held that refusal to admit a Negro to a non-public institution was not a violation of the 14th Amendment. The Kentucky courts, however, have attempted to enforce segregation in non-public schools. A Kentucky court[43] upheld the validity of an act which prohibited and imposed a fine and punishment upon those maintaining and operating an educational institution in which white and colored persons were taught at the same time and place. The statute in question was considered within the police power of the state. The U.S. Supreme Court[44] affirmed the opinion that segregated instruction may be imposed upon a chartered private school with these words:

> The prohibition against teaching white and negro pupils in the same institution . . . does not, when applied to a Corporation as to which the state has reserved the power to alter, amend, or repeal its charter, deny due process of law, or otherwise violate the Federal Constitution.
>
> The school, as a corporation created by the state has no natural right to teach at all. The state may withhold or qualify it.

The Kentucky court[45] reiterated this position when it ruled that "The legislature under the police power may regulate education in many respects and it may prohibit the mingling of white and colored children in the same schools, or in schools of immediate proximity."

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[42] State v. Maryland Institute, 87 Md. 643, 41 A. 126 (1898).

[43] Berea College v. Commonwealth, 123 Ky. 209, 94 S.W. 623, 124 Am. St. Rep. 344 (1906).

[44] Ibid., 211 U.S. 45, 29 S.Ct. 33, 53 L.Ed. 81 (1908).

[45] Columbia Trust Co. v. Lincoln Institute of Kentucky, 138 Ky. 804, 129 S.W. 113, 29 L.R.A. (NS) 53 (1910).

Many other courts have upheld the right of operators of non-public schools to accept or reject students as they desire. The discretion of the owner of a school, in accepting or rejecting students, was upheld by a New Mexico court.[46] A California court[47] concluded that "Private schools should be entitled to contract or refuse to contract with students of school's choice for whatever reason."

V. CONTRACTS IN NON-PUBLIC SCHOOLS

The matter of contracts was dealt with in a previous chapter, but there were some cases which were especially appropos to the matter of the supervision, regulation, and control of non-public schools. In many instances the courts have been called upon to arbitrate disputes over contracts between parents, personnel, and non-public schools.

An early court of New York (1824)[48] indicated that state courts could supervise contracts of non-public schools if they did not meet the charter provisions of the institution. The U.S. Supreme Court dealt with the matter of supervision of contracts and non-public educational institutions in the historic Dartmouth[49] case. In the official record of the transcript of this case the court reporter was prompted to write the following words:

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[46] Kirkpatrick v. Williams, 53 N.M. 417, 211 P. 2d 506 (1949).

[47] Reed v. Hollywood Professional School, 169 Cal. App. 2d 887, 338 P. 2d 633 (1959).

[48] Auburn Academy v. Strong, Hopk. Ch. 278 (N.Y., 1824).

[49] Trustees of Dartmouth College v. Woodward, 4 Wheat. 518, 4 L.Ed. 629 (1819).

> In the great celebrated case of Dartmouth College v. Woodward the inhibition upon the states, to impair by law the implication of contracts, received the most elaborate discussion, and the most efficient and instructive application. The argument of the Supreme Court in this celebrated case contains one of the most full and elaborate expeditions of the constitutional sanctity of contracts to be met with in any of the reports. The decision in this case did more than any other single act, proceeding from the authority of the U.S., threw an inpregnable barrier around all rights and franchises derived from the grant of the government; and to give solidarity and inviolability to the literary, charitable, religious and commercial institutions of the country.

The charter of Dartmouth, granted by the British Crown to the trustees in 1769 was considered by the Supreme Court a contract within the meaning of the U.S. Constitutional clause in Art. 1, Sec. 10, which prohibits the state from making any law "impairing the obligation of contract." An act by the legislature of New Hampshire altering the charter without the consent of the trustees, was considered an impairment of the contract and therefore the action of the state was considered unconstitutional and void.

In speaking of the original charter of the institution the Court said that

> This is plainly a contract to which the donors, the trustees, and the Crown (to those rights and obligations New Hampshire succeeds), with the original parties. It is a contract made upon a valuable consideration. It is a contract for the security and disposition of property. It is a contract, on the faith of which real and personal estate has been conveyed to the corporation. It is a contract within the letter of the Constitution, and was in its spirit also, unless the fact that the property is invested by the donors and trustees for the promotion of religion and education, for the benefit of persons who are perpetually changing, though the objects remain the same, shall create a particular exception, taking this case out of the provision contained in the Constitution.
>
> The opinion of the court, after mature deliberation is, that this is a contract, the obligation of which cannot be impaired without violating the Constitution of the U.S.

In rejecting the action of the state in attempting to make Dartmouth College a public rather than a private institution the court said of the reorganization that

> It is reorganized . . . in such a manner as to convert a literary institution, molded according to the will of its founder, and placed under the control of private literary men, into a machine narrowly subservient to the will of the government. This may be for the advantage of this college in particular and may be for the advantage of literature in general, but it is not according to the will of the donors, and is subversive of that contract, on the faith of which their property was given.

The state courts have exerted supervision and control over contracts of non-public schools in various ways. In a 1904 New York case[50] the court held that a board of trustees of a private academy could not raise the principal's salary because the academy had entered into a contract with the local board of education which controlled the salary of the principal. The court held that all provisions of the contract would be enforced.

A Louisiana court[51] in upholding the sanctity of a contract held that the board of trustees of an academy are without authority to dissolve or liquidate the corporation if the charter does not provide for liquidation. The court held, however, that the legislature could dissolve the corporation, if contract rights of the institution were protected, as the institution had not actually existed for a long period of time.

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[50] Trustees of Washington Academy in Salem v. Cruikshank, 88 N.Y.S. 330 (1904).

[51] School Board of Caldwell Parish v. Meredith, 139 La. 35, 71 S. 209 (1916).

The courts will not interfere, said a Massachusetts court,[52] with the reasonable rules and regulations of non-public schools. The court maintained that a contract for board and instruction in a private educational institution implies that the student will obey the regulations and rules of the school. The court will enforce payment for instruction of a contract, if the student is expelled for failure to comply with the reasonable rules of the institution.

The courts have refused to apply some regulations applicable to public schools to non-public schools because, an Illinois court[53] suggested, ". . . public schools belong to the public . . . Private schools do not. Students stand in a different position as to each class of schools." The same court, in the same case, however, emphasized the sanctity of contracts in non-public schools with these principles:

> . . . education is an object of national concern and a proper subject of legislation; . . . the grant of a charter by a state to a private educational institution is given in consideration of the benefits the public shall receive through the education of the youth; . . . the charter is a contract whose obligations cannot be impaired by law; and . . . the legislature has such power over the chartered institution as was reserved in the contract.

Trustees of non-public schools are bound to operate within the charter provisions of the institution, according to a Tennessee court.[54] A principal could not be replaced, said the court, even if the trustees deemed his replacement for the best interests of the school, because the charter, a contract with the state of Tennessee, protected his position.

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[52] Hood v. Tabor Academy, 296 Mass. 509, 6 N.E. 2d (1937).

[53] People ex. rel. Tinkoff v. Northwestern University, 333 Ill. App. 224, 77 N.E. 2d 345 (1947), App. Trans. 396 Ill. 233, 71 N.E. 2d 156 (1947), Cert. den. 335 U.S. 829, 69 S.Ct. 37, 93 L.Ed. 383 (1947).

[54] Webb v. Board of Trustees of Webb School, 38 Tenn. App. 173, 271 S.W. 2d 6 (Tenn. App., 1954).

In a California case[55] in 1960 a teacher was denied recovery of a contract amount from an academy. The teacher was employed and told that he would teach a class, and supervise and counsel in a dormitory. He signed a contract in which he agreed to "perform such additional services as may be required by the academy." He conducted his duties until a given date when he informed the superintendent that he would no longer serve in his dormitory duties. The court held that the academy was entitled to terminate the contract because

> The evidence shows that it is customary for teachers to do dormitory duty at respondent academy, and that this is a matter of considerable importance to the academy.

The academy, the court held, was entitled to terminate the contract because the contract included the provision that the academy "reserves the right to terminate the terms of this employment in case of any willful breach of duty. . . ." The teacher stated forcefully, indicated the court, that he was not willing to perform a substantial term of his contract.

VI. LICENSING OF NON-PUBLIC SCHOOLS

Licensing of non-public schools may be considered a form of control and regulation. A license may be considered a certificate which permits something, or gives permission to do something, ". . . to exercise a certain privilege or to carry on a particular business or to pursue a certain occupation." According to the same authority, a license may be considered a "privilege from a state or sovereign. . . To 'license' means to confer right or power which does not exist without it."[56]

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[55] Story v. San Rafael Military Academy, 3 Cal. Rptr. 847 (1960).

A license may or may not indicate approval. A license implies approval to some extent and approval may carry the same privileges as a license. For example, a Massachusetts court[57] indicated that a child must be educated in an "approved" school and that if a school were "approved" by the school committee the child could then be considered as being in compliance with compulsory attendance requirements.

A Florida court[58] decided that a private school may be subject to a license tax even if it does not operate at a profit. The court in stating that the particular school in question was subject to the tax indicated that

> it appears from the evidence that while the corporation was organized and exists as 'a corporation not for profit,' its operation is that of a business corporation or a business conducted by individuals, for profit.
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> It appears . . . that the owners and operators of the school involved are engaged in the business of operating a private school in which they charge tuition for the services rendered their patrons; the school is operated for the purpose of producing a livelihood for the owners and the operators thereof, and that it makes no difference whatever whether it is organized as an ordiary business corporation or 'a corporation not for profit,' or as a partnership, the result is all the same. . . .

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[56] Blacks Law Dictionary, Fourth Edition (St. Paul: West Publishing Co., 1951), p. 1067.

[57] Commonwealth v. Roberts, 159 Mass. 572, 34 N.E. 402 (1893).

[58] Miami Beach College Corporation v. Tomlinson, 143 Fla. 57, 196 So. 608 (1940).

Therefore, the school had to pay the ad valorem license tax.

In 1921 the New York legislature passed a law regarding licensing and supervision of all schools and courses. The law in question provided that no person, firm, corporation, association or society could conduct, maintain, or operate any school, institute or class without first making application for and receiving a license from the University of the State of New York. The application for license involved a statement concerning reasons for founding the school, objectives, and courses of study. The law stipulated that no license could be granted by the Regents of the University of the State for a school wherein it appeared that subversive doctrines would be taught. The Rand School of Social Science operated in New York without making application for a license and refused to apply for a license. The state sued[59] for an injunction to stop the Rand School of Social Science from operating until such time as the school obtained a license.

Although the case dealt with a school of a very limited scope, as far as non-public schools are concerned, the court in its opinion gave good grounds for the legality of requiring licensing for non-public schools in general. The school charged that the act of the legislature was unconstitutional as it deprived the operators of liberty and property. The court, however, found that

> There can be little question that it is within the power of the legislature to enact statutes for the self-preservation of the state. . . .

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[59] People v. Am. Socialist Society, 202 App. Div. 640, 195 N.Y.S. 801 (1922).

> There is no lawful discrimination in this statute. Teachers and schools can pursue their lawful calling without molestation, providing they do not instruct their pupils in the inhibited matters . . . .If the board of regents unjustly denies the defendant a license to pursue his course of instruction, or if the license thereto granted is unjustly taken away from it, the defendant and all others affected have the right to review such action through appropriate certiorari proceedings.
>
> All that is necessary for . . . any school applying for a license . . . to show is that its curriculum does not include the teaching of inhibited doctrines. . . No arbitrary power whatever is lodged in the University of the State of New York with respect to the issuance or revocation of a license under the act.
>
> Moreover, it seems to us that the act in question is well within the proper exercise of the police power of the state, and that for the purpose of protecting the peace, health, public safety, and security of the citizens of the state the legislature had the right to enact the statute.
>
> Any business of a public nature or affecting the public interest may be regulated by the legislature under its police power. There is no lawful discrimination in the act . . . against any person . . . . True it is that the state excepts public schools . . . educational institutions . . . incorporated by the University of the State. . . . schools now or hereafter established and maintained by religious denominations who are recognized as such at the time the act takes place. . . .The reasonableness of such exceptions is . . . clear.

The New York Court of Appeals in another licensing case,[60] dealt with the matter of standards for licensing non-public schools. The New York legislature passed a law which in effect, according to the court, empowered the state commissioner of education to

> . . . register and license, private schools, under regulations to be adopted by him, with no standard of limitations of any sort. The Legislature has not only failed to set out standards or tests by which the qualifications of the schools might be measured, but has not specified, even in most general terms, what the subject matter of the regulations is to be. . . .

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[60] Packer Collegiate Institute v. University of State of New York, 76 N.Y.S. 2d 499 (1948), rev. 298 N.Y. 184, 81 N.E. 2d 81 (1948).

The court declared the statute unconstitutional because the statute attempted to delegate legislative power with no adequate standards. The matter was one for the legislature to deal with, not to be left to the commissioner. The court concluded with these words:

> This is no small or technical matter. Private schools have a constitutional right to exist, and parents have a constitutional right to send their children to such schools. The Legislature, under the police power, has a limited right to regulate such schools in the public interest. Such being the fundamental law of the subject, it would be intolerable for the Legislature to hand over to any official or group of officials, an unlimited, unrestrained, undefined power to make such regulations as he or they should desire, and to grant or refuse licenses to such schools, depending on their compliance with such regulations.

In another New York case[61] the court agreed that the state can require licensing of private schools, but making approval of the tuition charged one of the prerequisites of approval was considered an unnecessary interference with individual liberty. The tuition price and the method of collection could not be controlled by state authorities. The court used this language:

> It will not be denied that education in general and schools in particular, be they public or private, are matters of public concern warranting some regulatory legislation. The question presented relates to the scope and extent to which such regulation is permissive under the constitution.
>
> It may be well that the power to regulate certain phases of private school operation such as the nature of curriculum, the qualifications of teachers and the like, is a necessary and indispensible corollary to the State's supervisory jurisdiction over education in general.

However, the court did not think that setting the price of tuition was a proper exercise of the police power of the state.

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[61] Grow System Sch. v. Board of Regents of Univ. of State, 277 App. Div. 122, 98 N.Y.S. 2d 834 (1950).

An Illinois court[62] ruled that the Department of Registration and Education of the State of Illinois could not remove a school from its list of accredited or approved schools without letting the school know definitely what was deficient. The court said that "The Institute was entitled as a matter of justice to know how specifically it had failed to meet the requirements of the Department."

According to a North Carolina court[63] the state has a right to regulate and license private schools and their solicitors. The court summarized that

> . . . the state has a limited right, under the police power, to regulate private schools and their agents and solicitors, provided: (1) there is a manifest present need which affects the health, morals, (2) or regulations are not arbitrary, discriminatory, oppressive or otherwise unreasonable, and (3) adequate legislative standards are established.

VII. INTERNAL AFFAIRS OF NON-PUBLIC SCHOOLS

Not infrequently the courts have been called upon to arbitrate internal disputes of those concerned with non-public schools.

Regulation of non-public schools is considered part of the authority of the state under the police powers. This regulation, however, is limited in that legislatures cannot under the guise of the police power impose restrictions that are unnecessary and unreasonable upon private property and on the pursuit of useful activities, according to the United

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[62] Northwestern Institute of Foot Surgery and Chiropody v. Thompson, 326 Ill. App. 439, 62 N.C. 2d 42 (1945).

[63] State v. Williams, 253 N.C. 337, 117 S.E. 2d 444 (1960).

States Supreme Court.[64] If an institution meets statutory requirements, generally it will be allowed to make its own rules internally.[65]

When the state of South Dakota passed a law which made it illegal for a private school not supported by a church to collect tuition fees in advance, the action was challenged. The law allowed such schools to collect advance tuition in the amount of $25.00, but no more. The court[66] in its opinion declared the act unconstitutional, as it was an unreasonable and arbitrary exercise of the police power and constituted a deprivation of freedom to contract. A New York court[67] was asked to rule on the reasonableness of a requirement that all students at a military school attend Sunday morning chapel. The court declared that a regulation that students attend daily religious exercises in the school was reasonable, but a regulation that cadets attend Sunday morning services in the village was not reasonable, nor was a regulation that Jewish students attend Christian Churches reasonable.

In a Tennessee case,[68] involving the internal affairs of a school, a young lady teacher brought suit for breach of contract against a school which had released her. The school charged that the young lady was guilty of social conduct which was indiscreet. The court sustained the young lady's suit for breach of contract, on the grounds that any private corporation created for charitable and benevolent purposes had the power to sue and be sued and was liable for its breach of contract in the same manner as an individual. The court said that a private school cannot expect unreasonable performance from its employees and then release them. The court indicated that a private academy cannot excessively control the lives of its employees. Miss Copass, the court concluded, could not be dismissed by the board without a breach of contract, on "trumped up" charges of the trustees not related to her teaching.

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[64] Seattle Trust v. Roberge, 278 U.S. 116, 49 S.Ct. 50, 73 L.Ed. 210 (1928).

[65] State v. Maryland Institute, 87 Md. 643, 41 A. 126 (1898).

[66] State v. Nuss, 79 S.D. 522, 114 N.W. 2d 633 (1962).

[67] Miami Military Institute v. Leff, 129 Misc. 481, 220 N.Y.S. 799 (1927).

[68] Hall-Moody Institute v. Copass, 108 Tenn. 582, 69 S.W. 327 (1902).

When a professor of a private academy charged that he was dismissed from an academy by an improper action of the Board of Trustees and its Board of Visitors the court[69] upheld his charges. The court pointed out that the dismissal of the instructor must be carried out according to the original charter and the ensuing statutes of the private school. The court declared that the internal affairs of the school such as dismissal of instructors were to be governed by the terms of these documents. In another case the court[70] upheld the right of the trustees of an institution to exercise their discretion on matters of policy. The court emphasized that it could not supervise those matters which rightfully belonged to the trustees.

In a similar matter of internal operation, a board of trustees voted to close down a school because income from the trust fund and tuition fees was insufficient to maintain the operation of the school. A group sued the trustees on the ground that the trustees had violated their fiduciary duties in determining that the school should be closed, and asked the court[71] to take possession of the assets and appoint new trustees. The court refused to do this, holding that the action of the trustees in closing the school permanently was reasonable and a proper exercise of their discretionary power.

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[69] Smyth v. Visitors, etc. of Phillips Academy, 154 Mass. 551, 28 N.E. 683 (1891).

[70] Ashburn v. Allen, 150 Va. 290, 143 S.E. 733 (1928).

In two cases the supreme court of Arkansas dealt with suits concerned with the internal affairs of a school involving the same parties. One decision was in 1950[72] and the succeeding one in 1953.[73] In the 1950 case an individual brought suit to recover a deed of trust note held by the school. It was held that the complainant could demand an accounting of the school records to see if any money was due him. The court indicated that the fiduciary relation existing between a church school and a bishop who was president of the board of trustees imposed upon the bishop the duty to render proper accounting of funds handled by him. The obligation to provide adequate records was especially important, the court pointed out, because the president of the school collected, deposited, and disbursed school funds, dominated and controlled the board, and was personally interested in some of the financial matters of the school. In the 1953 decision the trustee appointed by the court in the first decision presented an analysis of the records and financial transactions of the school. The school charged that apparent shortages were the responsibility of the president as he had no right to delegate accounting matters, and therefore was personally responsible for the shortages. The court, however, held that the president could properly delegate the bookkeeping function, and was not responsible for the loss of the school's bookkeeping records.

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[71] People v. Leitch, 351 Ill. App. 566, 115 N.E. 2d 917 (1953).

[72] Walters-Southland Institute v. Walker, 217 Ark. 602, 232 S.W. 2d 448 (1950).

[73] Ibid., 222 Ark. 857, 263 S.W. 2d 83 (1953).

VIII. CURRICULUM IN NON-PUBLIC SCHOOLS

It was reported in Chapter III that there were some state constitutions which imposed curricular requirements upon non-public schools. In Chapter IV were reported many statutory requirements concerning curriculum which were placed on non-public schools. The purpose of this section was to discuss some of the curriculum questions that have been litigated in the courts. The power of the state to supervise, regulate, and control curriculum was an important consideration for non-public schools.

Several courts have made pronouncements which relate to supervision of curriculum in non-public schools. The U.S. Supreme Court in Pierce[74] said that "No question is raised concerning the power of the state reasonably . . . to require . . . that certain studies plainly essential to good citizenship must be taught and that nothing be taught which is manifestly inimical to the public welfare." A North Carolina court[75] made it clear that private schools in order to be recognized must teach the comparable branches of instruction as are taught in the public schools. The same court in another case[76] indicated that the state has the power to regulate education in the schools and examine the pupils because such pupils affect the public school system. A New York court[77] has also upheld the right of the state to forbid teaching in any school which is not for the public welfare.

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[74] Pierce v. Society of Sisters, 268 U.S 510, 45 S.Ct. 571, 69 L.Ed. 1070, 39 A.L.R. 468 (1925).

The state legislature, of course, has the right to determine what is to be taught in the public schools. In the famous Scopes[78] case the Tennessee Supreme Court concluded that

> If the legislature thinks that, by reason of popular prejudice, the cause of education and the study of science generally will be promoted by forbidding the teaching of evolution in the schools of the state, we can conceive of no ground to justify the court's interference. The courts cannot sit in judgement on such acts of the legislature or its agents and determine whether or not the omission or addition of a particular course of study tends to cherish science.

The court explained that the act in question

> . . . requires the teaching of nothing. It only forbids the teaching of the evolution of man from a lower order of animals . . . .As the law . . . stands, while the theory of evolution of man may not be taught in the schools of the state, nothing contrary to that theory is required to be taught. . . .

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[75] West v. Lee, 224 N.D. 79, 29 S.E. 2d 31 (1944).

[76] State v. Williams, 253 N.C. 337, 117 S.E. 2d 444 (1960).

[77] People v. Am. Socialist Society, 202 App. Div. 640, 195 N.Y.S. 801 (1922).

[78] Scopes v. State, 154 Tenn. 105, 289 S.W. 363, 53 A.L.R. 821 (1927).

> Those in charge of the educational affairs of the state are men and women of discernment and culture. If they believe that the teaching of the science of biology is hampered . . . this course of study may be entirely omitted from the curriculum of our schools. If this be regarded as a misfortune, it must be charged to the legislature.

A Kansas court[79] held that a city board of education may exert a degree of control over a non-public school's curriculum by requiring its graduates to be examined before they are admitted to the public high school. The court said that the city board may require an examination of parochial school pupils even if it did not require such an examination for graduates of public schools. The fact that training accorded in the parochial school was equal, and the graduates used the same books, and were given the same tests as the public schools did not grant to the parochial students the right to enter without examination. In 1916 the Kansas court[80] stated that

> The legislature has not prescribed the courses of study in private, denominational, or parochial schools, nor concerned itself with such schools further than to prescribe that they must be taught by competent instructors. . .
>
> Since the legislature has refrained from exercising control over the courses of study in the private schools . . . it is too much to ask . . . its courts to meddle with them.

A New Hampshire court[81] reiterated the right of the state to supervise private educational efforts with these words:

> . . . it appears that attendance at some school may still be required, and that the state may supervise the school attended.

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[79] Creyhon et. al. v. Bd. of Ed. of City of Parsons, 99 Kans. 824, 163 P. 145 (1917).

[80] State v. Will, 99 Kan. 167, 160 P. 1025 (1916).

[81] State v. Hoyt, 84 N.H. 38, 146 A. 170 (1929).

> The power to supervise necessarily involves the power to reject the unfit, and to make it obligatory to submit to supervision. . . .
>
> . . . authorities . . . do not deny the power of the state to insist upon an approval of the proposed substitute for public school attendance. They do not limit that power to a mere right to inspect what is being done and to prosecute for deficiencies. Reasonable preventive measures may be taken as well as curative ones. And in that connection a reasonable requirement for submitting the proposed substitute for approval . . . may be imposed.
>
> . . . the state is entitled to establish a system whereby it can be known by reasonable means, that the required teaching is being done.

The matter of teaching a foreign language in the curriculum was dealt with in several courts. In a Nebraska case in 1919[82] it was held that the legislature could provide that foreign languages were not to be taught to pupils below the eighth grade. The acts in question, according to the court, stated that

> No person, individually or as a teacher, shall, in any private, parochial or public school, teach any subject to any person in any language than the English language.
>
> Languages, other than the English language, may be taught as languages only after a pupil shall have attained and sucessfully passed the eighth grade as evidenced by a certificate of graduation issued by the county superintendent of the county in which the child resides.

The court upheld the validity of the statutes, because they did not prohibit the teaching of a foreign language at all times but were intended as remedial action, within the police power of the state to correct a situation which had developed wherein the young people of the state were not learning a "common tongue."

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[82] Nebraska Dist. of Evangelical Lutheran Synod of Missouri, 104 Neb. 93, 175 N.W. 531, 7 A.L.R. 1688 (1919).

The language statutes of Nebraska were challenged in the U.S. Supreme Court in Meyer v. Nebraska[83] a few years later. Meyer, a teacher, had been convicted by a Nebraska court, as being in violation of the statutes, when he engaged in "the direct and intentional teaching of the German language as a distinct subject to a child who had not passed the eighth grade." Meyer taught in German a collection of Bible stories in a Lutheran parochial school. The Court reversed the decision of the Nebraska supreme court with these words:

> Practically, education of the young is only possible in schools conducted by especially qualified persons who devote themselves thereto. The calling always has been regarded as useful and honorable, — essential, indeed to the public welfare. Mere knowledge of the German language cannot reasonably be regarded as harmful. Heretofore it has been commonly looked upon as helpful and desirable. Plaintiff . . . taught this language in school as part of his occupation. His right to thus teach and the right of parents to engage him so to instruct their children, we think are within the liberty of the Amendment.
>
> . . . the legislature has attempted materially to interfere with the calling of modern-language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own.

On the same day the U.S. Supreme Court overruled decisions of the Iowa, Ohio, and Nebraska supreme courts by declaring their statutes and laws prohibiting the teaching of foreign languages to be unreasonable and arbitrary.[84] In 1927 the U.S. Supreme Court[85] again dealt with supervision and control of curriculum regarding language in non-public schools. In Farrington, action of the territory of Hawaii attempted to limit the children who attended foreign language schools, and to require concurrent attendance at a public school, and prescribed the books to be used. The U.S. Supreme Court in declaring the enactments void stated that

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[83] 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042, 29 A.L.R. 1446 (1923).

[84] Bartels v. State of Iowa, Bohning v. Ohio, Pohl v. Ohio, Neb. Dist. of Ev. Lutheran Syn. of Mo., Ohio., and other States v. McKelvie, 262 U.S. 404, 43 S.Ct. 628, 6/ L.Ed. 1047 (1923).

[85] Farrington v. Tokushige, 273 U.S. 284, 47 S.Ct. 406, 71 L.Ed. 646 (1927).

> . . . the measures adopted . . . go far beyond . . . regulation of privately supported schools . . . . They give affirmative direction concerning the intimate and essential details of such schools . . . and deny both owners and patrons reasonable choice and discretion in respect of teachers, curriculum and textbooks. . . .

In a 1950 case a New York court[86] held that attendance at a religious school which did not teach any of the common branches of secular knowledge did not fulfill the requirements of the compulsory education law. This particular school left to informal contacts of pupils outside of the school their development in reading, spelling, writing, English, language, and United States history. The court found that the parents could not substitute completely sectarian education for the required secular training.

IX. INSTRUCTORS IN NON-PUBLIC SCHOOLS

The courts have issued several opinions which have import for the qualifications which the state can require for instructors in non-public schools.

In 1916 the Kansas supreme court emphasized the right of the legislature to require that teachers teaching in a non-public school be competent teachers.[87] The U.S. Supreme Court[88] agreed that the state could rightfully require that ". . . .teachers should be of good moral character and patriotic disposition. . . ." in non-public schools. A New York court emphasized that the state has the right to supervise and examine teachers in non-public schools.[89]

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[86] Shapiro v. Dorin et. al., 99 N.Y.S. 2d 830 (1950).

A North Carolina court[90] observed that in order to preserve the public safety, health, and morals the legislature may regulate non-public schools. The state, said the court,

> . . . has the authority to establish minimum standards for . . . to inspect, supervise, and examine their teachers . . . to require that teachers shall be of good moral character. . . .

The California court[91] upheld the validity of a statute which required that if children do not attend a public school they must be instructed by a certified teacher. A Washington court,[92] also indicated that a teacher in a non-public school may be required to possess a certificate. The court, in this case, ruled that the county superintendent, in determining whether or not a school could meet minimum standards, should use the standards prevalent in the public schools.

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[87] State v. Will, 99 Kan. 167, 160 P. 1025 (1916).

[88] Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925).

[89] Smith v. Donahue, 202 App. Div. 656, 195 N.Y.S. 715 (1922).

[90] State v. Williams, 253 N.C. 337, 117 S.E. 2d 444 (1960).

[91] People v. Turner, 121 Cal. App. 2d 861, 263 P. 2d 685 (1953), App. dism. Turner v. People of California, 347 U.S. 972, 74 S.Ct. 785, 98 L.Ed. 112 (1954).

[92] State ex. rel. Shoreline School Dist. No. 412 v. Superior Court for King County, Juvenile Court, 55 Wash. 2d 177, 346 P. 2d 999 (1960).

The state supreme court of Ohio in State v. Glick[93] was asked to issue an injunction which would restrain teachers from teaching in Amish schools if they did not possess the qualifications for a teaching certificate. Also asked was an injunction to prohibit parents from sending their children to non-approved non-public schools. The court refused both requests, on the ground that the injury to the health, morals, or safety of any person was not shown by the continuance of the schools or the teaching of the teachers therein.

A somewhat opposite view was maintained by a Nebraska court in 1962,[94] which was dismissed on appeal to the United States Supreme Court. When asked by a parochial school association to provide relief from regulations and supervision regarding teacher certification and compulsory attendance, the Nebraska court refused to do so. The court found that such supervision was not unconstitutional, as it did not abridge and prohibit free exercise of religious beliefs and was not an arbitrary attempt to exercise the police power of the state. The court used these words:

> . . . there is nothing arbitrary, unreasonable, or unconstitutional relating to the qualifications of teachers to teach in the parochial, denominational, private, or public schools of this state or with the requirements of compulsory education and attendance at such schools. Parochial, denominational, and private schools in this state have met the requirements of the statutes and have abided by them.
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> The right of religious freedom is not involved in this case. The defendants do not deny these plaintiffs have the right to worship God as their consciences dictate as provided for under the Constitutions of the United States and of this state. What the

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[93] 172 Ohio St. 249, 175 N.E. 2d 68 (1961).

[94] Meyerkorth v. State, 173 Neb. 889, 115 N.W. 2d 585, app. dism. 372 U.S. 705, 83 S.Ct. 1018, 10 L.E. 2d 125 (1962).

> defendants insist upon is a qualified teacher under reasonable statutes providing for such qualifications to teach school. The statutes complained of by the plaintiffs are not arbitrary or unreasonable nor an invalid attempt to exercise the police power of the State, nor are the regulations governing the approval and accreditation of Nebraska nonpublic schools issued by the Nebraska Department of Education.

X ZONING REQUIREMENTS AND NON-PUBLIC SCHOOLS

A very direct form of control on non-public schools has been the manner in which the courts have construed zoning regulations applying to non-public schools. License ordinances have also affected non-public schools. A New York court,[95] for example, when dealing with a case in which a liquor license was being sought, ruled that the license should not be granted because of the proximity of the establishment to a non-public school. The court held that the term "schoolhouse" for licensing purposes included all schools, public, common, private, semi-public, and semi-private of the same grade.

In 1962 a California court[96] dealt with the matter of condemnation of property under rights of eminent domain. A Jewish academy was using property under lease from the university, and sought to condemn the property so it could continue to use it. The school argued that if the public school district has the right of eminent domain for an elementary school, the private school had under statute the same right. The private educational institution operated an elementary school with facilities available to the general public. In answering the question of whether a private educational institution may maintain an action to condemn property for use as an elementary school the court found that "the right to condemn property has not been extended to private elementary schools."

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[95] In Re Townsend, 195 N.Y. 214, 88 N.E. 41 (1909).

[96] Yeshiva Torath Emeth Academy v. University of Southern California, 25 Cal. Rptr. 422 (1962).

In a Michigan case[97] in 1939 the court was asked to determine whether a private school of dance and arts was a legitimate exception to a zoning ordinance which required that in a given area only residences, churches, and schools, and other public buildings could be constructed on specified lots. In upholding the right of the school to build, the court said:

> There is no serious question that the defendant is conducting a "school." The word is a generic one and, where not affected by its context, means little more than an institution with educational purposes or activities. Although defendant is teaching for profit, she is engaged in the promotion of a particular branch of knowledge. It is not contended that because the student body is small or because the course of study is devoted more to the arts than to the sciences, that the establishment does not fulfill the requirements of an educational institution.

It was contended that in the phrase of the ordinance "schools and churches or other public buildings" the word "schools" must be modified by "public", thus excluding from the exception to the restriction institutions which are concededly private in nature. The Michigan court held, however, that private schools should not be excluded, but the court said that

> If the plattors intended to distinguish between public and private schools or instruction conducted with and without direct profit to the instructor, that intention should have been manifest in terms admitting no contrary inferences.

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[97] Bastendorf v. Arndt, 290 Mich. 423, 287 N.W. 579, 124 A.L.R. 445 (1939).

In a subsequent Iowa case,[98] a private school was charged by its neighbors with being a nuisance, and the neighbors sought an injunction restraining the owners from operating the schools, contending that the school existed as a violation of zoning ordinances. In denying the injunction, the court found that the private school was not in violation of zoning ordinances. The opinion pointed out that charges that it was a nuisance must be proved, and concluded the law would protect the school as it would any other property.

In a Wisconsin case[99] in 1954 the court was asked to determine whether a building inspector's refusal to issue a building permit for construction of a private high school was reasonable. The city ordiance in question permitted construction of public high schools, public elementary schools, and private elementary schools in residential class "A" areas. The court took the position that the discrimination between public high schools and private high schools was supported, because

> . . . the term "public" is the antitheses of "private." The public school is not a private one. They serve different interests and are designed to do so. The private school is founded and maintained because it is different. Is that difference material to the purpose of zoning? In many respects the two schools perform like functions and in probably all respects concerning noise, traffic difficulties, and other objectionable features . . . they stand on an equality . . .

But in the opinion of the court the schools differed when "the promotion of the general welfare of the community" is considered. The court continued that:

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[98] Livingston v. Davis, 243 Ia. 21, 50 N.W. 2d 592, 27 A.L.R. 2d 1237 (1951).

[99] State ex. rel. Wis. Lutheran High Sch. Conf. v. Sinor, 267 Wis. 91, 65 N.W. 2d 43 (1954).

> The public school has the same features objectionable to the surrounding area as the private one, but it has also a virtue which the other lacks, namely that it is located to serve and does serve that area without discrimination. Whether the private high school is sectarian or commerical . . . in its services it discriminates and the public school does not. Anyone in the district of fit age and educational qualifications may attend the public high school. It is his right. He has no comparable right to attend a private school. To go there he must meet additional standards over which the public neither has nor should have control. The private school imposes on the community all the disadvantages of the public school but it does not compensate the community in the same manner or to the same extent. If the private school does not make the same contribution to public welfare this difference may be taken into consideration by the legislative body in framing its ordinance.
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> . . . we consider . . . that no unconstitutional or otherwise illegal discrimination appears in the zoning ordinance by reason of its exclusion of private high schools from "A" residence zones while accepting public schools of the same rank.

Other courts, however, such as in Catholic Bishop of Chicago v. Kingery[100] and Miami Beach v. State ex. rel. Lear[101], have held that there is no substantial difference between a public and a private school, and therefore zoning ordinances making any distinctions were void.

In a 1960 New York case[102] neighbors sought an injunction to restrain a private school from operating, and made several accusations regarding violation of the building codes. The charge was also made that the institution was not actually a school, but was a "day camp." The court supported the school and declared that testimony received indicated it truly was a school regardless of the preponderance of physical activities.

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[100] 371 Ill. 257, 20 N.E. 2d 583 (1939).

[101] 128 Fla. 750, 175 S. 537 (1937).

[102] Incorporated Village of Brookville v. Paulgene Realty Corp., 200 N.Y.S. 126, affd., 218 N.Y.S. 2d 264, 225 N.Y.S. 2d /50, 11 N.Y. 2d 672, 180 N.E. 2d 905 (1960).

City ordinances on building and zoning were dealt with by a New York court in 1961.[103] A lower New York court held that a town zoning ordinance attempting to regulate the number of students permitted in a private school at one time was beyond the town's jurisdiction. The questioned regulation, according to the court, was an educational regulation and was not within the scope of the powers of the town board as a safety or health measure.

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[103] Betty June School, Inc., v. Young, 201 N.Y.S. 2d 692 (1961).

CHAPTER VIII

THE EXTENT TO WHICH THE STATES HAVE BEEN PERMITTED TO AID NON-PUBLIC SCHOOLS

The courts of almost all of the states have been called upon at least once to render a decision on the validity of some type of public aid to non-public schools. The aid challenged has been direct, indirect, to the school, to the child, or to the parents.

The court cases involving public aid for non-public schools were reported in this chapter. There were a few cases which reached the federal courts which were included in the first section.

I. FEDERAL COURT CASES

In 1962, a United States Circuit Court of Appeals[1] was asked to rule on an income tax deduction claim for contributions to a non-public school. The court declared that "The law is well settled that tuition paid for the education of the children of a taxpayer is a family expense, not a charitable contribution to the educating institution." However, in *De Jong*, a deduction was claimed because the school charged no tuition, and contributions from parents supported the school. The Tax Court was supported by the Court of Appeals in the decision that the actual cost of the education of the children was in the nature of tuition and was not a tax-deductible item. However, contributions above the cost could be considered deductible.

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[1] *De Jong v. Commissioner of Int. Revenue*, 309 F. 2d 3/3 (9th Cir., 1962).

During the nineteenth century federal monies were expended for education in sectarian schools and the U.S. Supreme Court[2] sanctioned it to carry out federal purposes. However, the Court[3] emphasized later that Congress had said in 1895 that it ". . . is hereby declared to be the settled policy of the Government to hereinafter make no appropriation whatever for education in any sectarian school." According to the court in Ruben Quickbear when the expenditure of federal monies to Catholic Indian schools was challenged, the monies held in trust for the Indians could be rightfully expended for such purposes, but other monies appropriated by Congress could not be so expended.

In 1946 the U.S. Supreme Court[4] was asked to issue a decision in a transportation case. A New Jersey statute authorized district boards of education to make rules and contracts to provide for transportation of children to and from school to all schools except schools operated for profit. Under an arrangement duly made the township provided for the reimbursement of parents for transportation to sectarian schools. A taxpayer challenged the validity of the statute under the 14th Amendment, claiming that it violated the "due process clause", and the 1st Amendment's provision prohibiting laws "respecting the establishment of religion." The Court denied the validity of the charges and stated:

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[2] Montana Catholic Missions v. Missoula County, 200 U.S. 118, 26 S.Ct. 197, 50 L.Ed. 398 (1906).

[3] Ruben Quickbear v. Leupp, 210 U.S. 50, 28 S.Ct. 690, 50 L.Ed. 154 (1908).

[4] Everson v. Board of Education of Ewing, 330 U.S. 1, 67 S.Ct. 504, 71 L.Ed. 711, 168 A.L.R. 1392 (1946), reh. den. 330 U.S. 855, 67 S.Ct. 962, 91 L.Ed. 1297 (1947).

> The New Jersey legislature has decided that a public purpose will be served by using tax raised funds to pay the bus fare of all school children. . . . the fact that a state law, passed to satisfy a public need, coincides with the personal desires of the individuals most directly affected is certainly an inadequate reason for us to say that a legislature has erroneously appraised a public need.

The Court declared that

> The state contributes no money to the schools. It does not support them. Its legislation, so applied, does no more than provide a general program to help parents to get their children, regardless of their religion, safely and expeditiously to and from accredited schools.
>
> The first Amendment has erected a wall between the church and state. That wall must be kept high and impregnable. We could not approve the slightest breach. New Jersey has not breached it here.

The decision in Everson harmonized with the conclusion reached in Cochran in 1930,[5] although the theory was somewhat different. In Cochran the appropriation of state money derived from taxation to supply school books free to children in private schools, as well as children in public schools, was challenged. The Court held that the furnishing of the books did not violate any provisions of the federal constitution. The court explained:

> The contention is that taxation for the purpose of school books constituted a taking of private property for a private purpose. The purpose is said to be to aid private, religious, sectarian, and other schools not embraced in the public educational system of the state by furnishing free textbooks to the children. . . . One may scan the acts in vain to ascertain where any money is appropriated for the purchase of school books for the use of any church, private, sectarian or even public schools. The appropriations were made for the specific purpose of purchasing school books for the use of the children of the state, free of cost to

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[5] Cochran v. State Board of Education, 281 U.S. 370, 50 S.Ct. 335, 74 L.Ed. 913 (1930).

> them. It was for their benefit and the resulting benefit to the state that the appropriations were made. . . .
>
> The schools are not the beneficiaries of these appropriations. They obtain nothing from them. . . .The school children in the state alone are the beneficiaries.

Thus by applying the "child benefit" theory in Cochran and the "public purpose" theory in Everson, the Court found that the provisions for textbooks and transportation, respectively, did not violate any provisions of the federal Constitution.

II. STATE CASES

The cases involving some form of aid to non-public schools which were litigated in the state courts were reported in this section.

Alaska. In 1961 the constitutionality of an Alaska statute which 6 authorized free transportation of children attending non-public schools was challenged in Mathews v. Quinton.[6] The court determined that under provisions of the Alaska Organic Act the legislature could not pass legislation which gave authority to use public funds for the transportation of children to a non-public school, because, said the court, the use of such funds constituted a benefit to the school. The court followed the argument of the dissent of Justice Rutledge in Everson, and cautioned that many other items could be considered of indirect benefit, if something so essential as transportation were considered of no direct benefit. The court stated that in its opinion the provision of the transportation was in violation of the state constitution, as well as the Alaska Organic Act.

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[6] 362 P. 2d 932 (Alas., 1961), app. dism. 368 U.S. 517, 82 S.Ct. 530, 7 L.Ed. 2d 522 (1962).

Arizona. The Arizona Supreme Court, in Verde Valley School,[7] held that since it is state policy to encourage private educational institutions, a strict construction of tax exemptions should not be used to subvert that policy. The county tax officials collected taxes from a school under protest of the school. The tax officials claimed that since the institution received rent, student fee charges, and tuition it was not tax exempt. The court, however, indicated that the receipt of these monies did not disqualify the school from a property taxation, as this was a normal operating procedure for a nonprofit, non-public school.

Arkansas. The Arkansas Supreme Court ruled in Phillips Co. v. Estelle[8] that exemption from property taxes on school buildings " . . . applies to private schools as well as public schools."

California. A California court[9] held that the section of the Education Code which permits school districts to transport pupils to private schools at public expense does not infringe the constitutional prohibitions against the appropriation of public funds in aid of religious sects and denominational schools. The court concluded that

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[7] Verde Val. School v. Yavopai County, 90 Ariz. 180, 367 P. 2d 223 (1961).

[8] 42 Ark. 536 (1884).

[9] Bowkder v. Baker, 73 Cal. App. 2d 653, 167 P. 2d 256 (1946).

> In view of the broad police powers of the State to promote the educational welfare and safety of its citizens, including little children, of the broad mandate to the legislature found in . . . the Constitution, of the fact that the direct benefit of the legislators authorizing the transportation of pupils attending private schools flows to the children in providing for their safety and promoting their education, with only an indirect benefit to the private parochial school, and in view of the rule that requires us to resolve any doubt in favor of the constitutionality of a challenged act of the legislature, we conclude that the legislation is constitutional and is not subject to the attack made here.

In a tax exemption case a California court of appeals[10] held that since ". . . a public benefit is clearly evident in . . ." the operations of a particular nonpublic school ". . . because to the extent that it offers education to its students . . ." it is entitled to a tax exemption as a charitable educational organization. The court noted that a nonpublic school, such as Sarah Dix Hamlin, ". . . relieves a burden of education which might otherwise be imposed upon the public generally."

Connecticut. The Supreme Court of Connecticut held in a 1951 case[11] that houses owned by a non-public school to provide living space for its teachers were not eligible for exemption from real estate taxes. The court emphasized that property used exclusively for educational purposes would be exempt, but that houses for teachers purchased by the school to enable it to retain teachers did not meet the qualification for tax exemption.

In 1960 a Connecticut statute was challenged which enabled towns to transport children to parochial schools at public expense. The court[12] held that the statute making available transportation to non-public schools was not unconstitutional if the schools were nonprofit. The statute did not, according to the court, violate the state or federal constitutions. However, the court found that the implementation of the statute was unconstitutional because the monies used to pay for the transportation were derived from the common school fund. The constitution did, according to the court, prohibit the expenditures of monies from the school fund for anything other than the support or encouragement of the public or common schools. Therefore, the particular source of the funds, according to the court, made the payment for transportation to non-public schools unconstitutional.

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[10] Sarah Dix Hamlin School v. City and County of San Francisco, 34 Cal. Rptr. 376 (1963).

[11] New Canaan County School v. Town of New Canaan, 138 Conn. 347, 84 A. 2d 591 (1951).

Delaware. The Delaware Supreme Court[13] ruled that an appropriation by a county board to a private industrial school ". . . towards the maintenance and education of each boy committed to an 'industrial school' . . ." was not an appropriation to a non-public educational corporation as prohibited by the constitution.

In a transportation case[14] the same court held that a constitutional provision which stated that ". . . no portion of any fund now existing, or which may hereafter be appropriated, or raised by tax, for educational purposes, shall be appropriated to, or used by, or in aid of any sectarian . . . school . . . ." prohibited the expenditure from the general fund for transportation of pupils to non-public schools. The court ruled that "fund" as used in the constitution referred to any public money. "Aid" was construed by this court to mean any aid, whether direct to the school, or indirect to the pupil.

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[12] Snyder v. Town of Newton, 147 Conn. 374, 161 A. 2d 770 (1960), app. dism., 365 U.S. 299, 81 S.Ct. 692, 5 L.Ed. 2d 688 (1960).

[13] State v. Levy Court of Newcastle County, 17 Del. 597, 43 A. 522 (1899).

[14] State ex. rel. Traub v. Brown, 36 Del. 181, 172 A. 835 (1934).

Florida. At least two cases have been brought before the Florida Supreme Court which dealt with tax exemption of non-public school property.[15] The Florida constitution provides that institutions with educational purposes may be exempted from taxation, and the legislature of the state has exempted all property held for educational purposes. In the words of the court, the legislature has decided to ". . . leave it to judicial construction to determine whether or not the purpose for which the property is held and used is an 'educational purpose'." In the particular cases at bar the court decided that even though the individuals concerned earned their livelihood from the property in question, and there may have been an incidental profit surplus, that the property ". . . because of its long-continued use as a school was exempt under the Constitution and laws of Florida."

Georgia. In a supreme court case in 1905[16] it was held that a school operated by a New York charitable organization was not subject to taxation because it was clearly a nonprofit organization, owning real estate only to carry out its stated objectives of educating Negro youth.

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[15] Lummus v. Florida Adirondack School, 123 Fla. 810, 168 So. 232 (1936); See also Lummus v. Miami Military Academy, 123 Fla. 832, 168 So. 241 (1936).

[16] Brewer v. American Missionary Ass'n., 124 Ga. 490, 52 S.E. 804 (1905).

Illinois. In 1888 the Illinois Supreme Court[17] held that payment of tuition and maintenance fees to a non-public school by the county for girls under the jurisdiction of the county court was unconstitutional. The court held that any amount paid to the schools was "in aid" even if the amount paid was less than the cost of the services rendered. The court said that if a sectarian school could be paid out of public funds because this would relieve the state of burdens it would otherwise bear, there was then, according to the court, no reason why all public education could not be subjected to such sectarian influence.

In four decisions twenty years later, 1917-1919, the Illinois court took an opposite view and supported payments to sectarian schools for services rendered. In the first such case, Dunn v. Chicago Industrial School,[18] the court maintained that since the tuition paid on the behalf of the girls by the court was less than the cost to the schools for the girls' maintenance and instruction, regardless of religious instruction, the payment could not be said to be in aid of the Catholic church. In a subsequent case,[19] the court maintained the same opinion for payments to a Lutheran school wherein students voluntarily could attend religious services, if they desired, in a separate mission operated by the school.

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[17] Cook County v. Chicago Industrial School for Girls, 125 Ill. 540, 18 N.E. 183, 1 L.R.A. 437, 8 Ann. St. Rep. 386 (1888).

[18] 280 Ill. 613, 117 N.E. 735, L.R.A. 1918 B 207 (1917).

[19] Dunn v. Addison Manual Training School, 281 Ill. 352, 117 N.E. 993 (1917).

In Trost v. Hetteler Manual Training School[20] the Illinois court supported payments to the sectarian school because the payment was less than the cost at state institutions and did not include the cost of religious instruction, and children who were not Catholics were not required to attend chapel services, although other religious exercises were held in the classrooms. In 1919[21] the court also held that a Catholic industrial school could recover fees from the county for girls committed to the school by the court. The court maintained that since the fees were less than those costs involved at state institutions that constitutional provisions prohibiting aid to sectarian institutions were not violated.

However, in a case involving the furnishing of free water to parochial schools, Board of Education of Alton Community Consolidated School Dist. No. 151 v. Alton Water Co., the Illinois court[22] held that parochial schools were strictly private corporations and that a municipal corporation cannot levy a tax for their benefit. A city ordinance which provided that the water company must, as a consideration for its franchise rights, furnish free water to the schools was declared invalid.

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[20] 282 Ill. 504, 118 N.E. 743 (1918).

[21] St. Hedwig's School v. Cook County, 289 Ill. 432, 124 N.E. 629 (1919).

[22] Board of Education of Alton Community Consol. School Dist. No. 151 v. Alton Water Co., 314 Ill. 466, 145 N.E. 683 (1924).

Indiana. The Indiana Supreme Court[23] held that whether or not schools are parochial or public is determined by the control of the school. The public school trustees were informed by local Catholic school authorities that the parochial school authorities would not open their schools during the following year to serve the 800 pupils who were presently being instructed in those schools. Thereupon, the public school authorities employed the Catholic school teachers, Catholic churches contributed the use of the buildings, and the public schools were then held in what had previously been the parochial schools. A taxpayer sued to restrain the board of trustees from continuing payments for the support of "sectarian schools." The court held, however, that since the teachers were employed by the public school trustees, the course of study utilized was that prescribed by the board of education, and the schools were supervised by the city superintendent of schools and the director of instruction, by such action the board of trustees actually established "public schools" in such buildings and therefore payment by the school treasurer of the teachers' salaries from public funds was valid.

Iowa. In 1918 the Iowa Supreme Court[24] held that a public school board could not rent a room in a parochial school building, and provide for the education of ten children in such a room. The court ruled that a school conducted under such an arrangement was actually a parochial school, and the expenditure of public funds to support such a school was not proper. The court characterized the school as follows:

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[23] State ex. rel. Johnson v. Boyd, 217 Ind. 348, 28 N.E. 2d 256 (1940).

[24] Knowlton v. Baumhover, 182 Iowa 691, 166 N.W. 202, 5 A.L.R. 841 (1918).

> . . . so far as its immediate management and control were concerned, the manner of imparting instruction, both secular and religious, and the influence and leadership exercised over the minds of the pupils, it was thoroughly and completely a religious parochial school as it could well have been had it continued in name as well as in practice the school of the parish. . . .
>
> . . . it must be said that with the abandonment of the public schoolhouse and the transfer of the school into the parochial building, and its organization and conduct as there perfected, the school ceased to have a public character in the sense contemplated by our laws, and became . . . a religious school. . . .

In 1947 the Iowa court[25] was asked for a declaratory judgement by a school board for the purpose of determining the responsibilities of a public school board in providing transportation to private schools for rural school children living along established bus routes. The plaintiffs argued that statutes requiring the boards to provide "suitable transportation. . . for every child of school age" indicated that transportation should be provided to children attending non-public schools. The court, however, was of the opinion that funds may not be appropriated for transportation of children to other than public schools. The court stated that

> We may agree with the proposition of the plaintiffs that the duty of transportation placed upon the school board is mandatory, but mandatory only as to pupils under the jurisdiction of such boards. That is, the pupils of the public school with whom only is the school board concerned. The board of the consolidated school district is not required, by law, to exercise jurisdiction over the private schools, except in the few instances required by statute.

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[25] Silver Lake Consolidated School District v. Parker, 238 Iowa 984, 29 N.W. 2d 214 (1947).

> We believe the school laws of the State concern only the public schools unless otherwise expressly indicated and do and can apply only to the schools within the purview of the school statutes, or under the control or jurisdiction of the school officials, and that this would apply to transportation. . . .we are satisfied also that the power of the local boards to provide for transportation is limited strictly to those who attend public schools. . . To place private schools upon the same basis as the public schools would open up a system of control of such private schools such as would tend to authorize the management and government of those schools by the state — a result in no way sought either by those in control of state public schools, or of the private schools.

Kansas. In 1892[26] a railroad sued the city of Atchison to recover taxes it had paid because the city was aiding through tax funds certain private sectarian schools. The court concluded that even though the schools benefited the city, since they were not under the direct control and supervision of the city officials public monies could not be used for the support of such schools.

In another Kansas case[27] a school district was enjoined from expending funds to support a school controlled by a religious organization. The court ruled that such expenditures, derived from taxes, were unlawful.

The matter of tax exemption for property of non-public schools was before the Kansas courts several times. In two nineteenth century cases it was held that land owned by an educational institution, but not occupied by it, was not exempt from taxation.[28] To qualify for tax exemption, said the court, use for "education purposes" must be "immediate, direct, and exclusive."[29] The Kansas court[30] did hold that since the constitution exempted from taxation properties used exclusively for educational purposes, the legislature could not limit the exemption to ten acres, if the additional land was used exclusively for educational purposes. In 1914[31] the court permitted a municipality to levy a special assessment tax for improvements against an otherwise exempt educational institution.

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[26] Atchison, T., and S.F. Railroad Co., v. Atchison, 47 Kan. 712, 28 P. 1000 (1892).

[27] Wright v. School District, 151 Kan. 485, 99 P. 2d 737 (1940).

[28] Washburn College v. Commissioners of Shawnee Co., 8 Kan. 344 (1871).

Kentucky. Litigation in the area of tax exemption has been prolific in Kentucky. In a 1892 case[32] the Kentucky Supreme Court declared that an act which exempted from taxation parents who sent their children to private schools was unconstitutional. A questioned act also provided that the portion of the school fund which these children were entitled to should be paid to teachers of the private schools. The court declared that it was perfectly proper to enjoin the superintendent of schools from expending any such funds. In another early case[33] the court held that ". . . institutions of purely public charity and institutions of education not used or employed for gain by any person or corporation . . ."

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[29] St. Mary's College v. Crawl, Treas., etc., 10 Kan. 442 (1872).

[30] Ottawa University v. Stratton, 85 Kan. 246, 116 P. 892 (1911).

[31] Wichita v. Board of Education, 92 Kan. 967, 142 P. 946 (1914).

[32] Underwood v. Wood, 93 Ky. 177, 19 S.W. 405, 15 L.R.A. 825 (1892).

[33] Louisville v. St. Xavier's College, 100 Ky. 518, 36 S.W. 994 (1896).

are exempt from taxation. In another case,[34] even though pupils paid fees which were used to maintain the school, the institution could still be exempted as an educational and charitable institution. In an 1898 case[35] the court held that the tax exemption might apply even though the institution is conducted by a particular sect or denomination. Thus the school could be exempted from taxation, but not the parents.

Regarding contracts for instruction, and reminiscent of the Underwood case, the Kentucky court held[36] that an arrangement between a board of education and a sectarian institution, under which the sectarian institution is paid tuition for the education of county high school students, is a violation of the constitution. The court emphatically declared that according to the constitution it was

> . . . unlawful for the trustees of any common or graded common school or educational institution, supported in whole or in part by public funds raised by taxation or dedicated to common school purposes, to enter into any contracts, agreements, or arrangements through or under which such school or educational institution may be brought directly or indirectly under the influence or control, or supervision of any denominational or sectarian institution or school.

In a later case in 1928[37] the court held, however, that an arrangement whereby inmates of a Baptist Orphans' Home attended public schools was not violative of the constitutional provision prohibiting appropriations for private or sectarian purposes.

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[34] Trustees of Kentucky Female Orphan School v. City of Louisville, 100 Ky. 470, 36 S.W. 921, 40 L.R.A. 119 (1898).

[35] Louisville v. Nazareth Literary and Benevolent Institute, 100 Ky. 518, 36 S.W. 994 (1898).

[36] Williams v. Board of Trustees Stanton Common School District, 173 Ky. 708, 191 S.W. 507 (1917).

[37] Crain v. Walker, 222 Ky. 828, 2 S.W. 2d 654 (1928).

In Sherrard v. Jefferson County Board of Education[38] the court held unconstitutional a statute which entitled pupils in private schools to transportation in the same manner as was extended to pupils in public schools. The court took the view that constitutional provisions related to the common schools meant public schools only, and that constitutional provisions limiting support to the common schools must be applied. The court pointed out that the defendants had argued the constitutionality of providing transportation

> . . . upon the sole grounds that it is a valid exercise of the police power of the State in benefit or aid for the children and not for the school, thus attempting to draw a distinction between 'the school' and the 'children' attending the school. . . .
>
> The appropriation and directed use of public funds in transportation of public school children is openly and direct aid to public schools 'as such.' When such aid is purported to be extended to the sectarian school there is in our judgement a clear violation of . . . our constitution.

The same court, however, in Nichols v. Henry,[39] upheld the validity of counties providing out of general funds for the supplementing of the school bus system to benefit *pupils other than those attending* public schools. The court held that this action was not in circumvention of its Sherrard decision or in circumvention of constitutional provisions.

In a 1956 Kentucky case[40] three issues concerning aid to non-public schools were litigated. The court ruled that teachers engaged to teach in a public school could wear the garb of their religious order without violating anyone's constitutional guarantee of religious freedom. The court also indicated that the fact that the school board rented school buildings from the church was not in violation of a constitutional prohibition against the use of tax money for the support of churches, as long as the church did not attempt to influence or control the schools. In the matter of enjoining the school board from expending monies to pay for transportation to private schools the court reaffirmed Sherrard, holding unconstitutional expenditures by school boards from school funds for that purpose. The court also reaffirmed Nichols when the expenditure was from county funds to protect all children. However, the court held that when computing the counties' share of transportation costs, the "per capita" basis of cost should be used in regard to parochial school students, as basing the counties' share of "increased" costs for parochial students did not result in a share comparable to the actual usual method of expending funds. In a 1960 case[41] the Kentucky court again affirmed the principle that the county share for parochial school students' transportation should be based on a per capita basis percentage of costs. The opinion directed that the "straight per capita basis" be used in computing the costs. This formula involved determining the percentage of the number of non-public school pupils transported and applying that percentage to the total transportation cost, including depreciation of vehicles.

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[38] 294 Ky. 469, 171 S.W. 763 (1943).

[39] 301 Ky. 434, 191 S.W. 2d 930, 168 A.L.R. 1385 (1945).

[40] Rawlins v. Butler, 290 S.W. 2d 801 (Ky., 1956).

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[41] Board of Education of Jefferson County v. Jefferson County, 333 S.W. 2d 746 (Ky., 1960).

Louisiana. The Louisiana supreme court has construed the matter of tax exemptions for non-public school property rather strictly. An 1876[42] court held that a school building was not exempt unless the owner of the building operates the school. If the owner receives rent from the building, even though it is used as a school, the building is not eligible for tax exemption. In a later case in 1883[43] the court held that tax exemption of property for non-public schools only applies to the buildings and properties used exclusively for school purposes. The property used for revenue to support the school, according to the court, is not eligible for tax exemption. The court agreed in another tax case[44] that property used for educational purposes was exempt from taxes even if students were required to pay tuition to attend. The Louisiana court[45] has laid down a strict interpretation of what constitutes a "public institution," declaring that any institution not strictly public is not eligible for a legislative appropriation.

The Louisiana court[46] upheld the constitutionality of statutes expressly permitting the purchase of textbooks for the pupils of non-public schools from tax funds. The court ruled that making an appropriation to furnish such school books was not an unconstitutional act of taking property for a private and invalid purpose. Borden was followed by another textbook case in the same year.[47] Cochran[48] was affirmed by the U.S. Supreme Court with these words:

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[42] Armand v. Dumas, 28 La. Ann. 403 (1876).

[43] State v. Board of Assessors, 35 La. Ann. 668 (1883).

[44] State ex. rel. Cunningham v. Board of Assessors of Parish of Orleans, 52 La. Ann. 223, 26 So. 872 (1898).

[45] State v. Graham, 25 La. Ann. 440 (1873).

[46] Borden v. Louisiana State Board of Education, 168 La. 1005, 123 So. 655, 67 A.L.R. 1183 (1929).

> The appropriations were made for the specific purpose of purchasing school books for the use of the school children of the State, free of cost to them. It was for their benefit and the resulting benefit to the state that the appropriations were made . . . The schools, however, are not the beneficiaries of these appropriations. . . .What the statutes contemplate is that the same books that are furnished children attending public schools shall be furnished children attending private schools. This is the only practical way of interpreting and executing the statutes, and this is what the State board of education is doing.

Maine. The Supreme Court of the State of Maine held in 1959[49] that a municipal government did not have the power to expend tax monies for transporting private school pupils to their respective schools. The court pointed out that no ". . . municipality should regulate by ordinance or order any subjects which would affect or influence general education unless permitted to do so by an express delegation of power." The court observed further that the legislature had made transportation a component part of the school program, but that the municipality had only that authority which was given to it by the legislature. The opinion differentiated Everson as a case in which transportation was constitutional because of appropriate statutory provision. By way of dictum the court declared itself

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[47] Cochran v. Louisiana State Bd. of Education, 168 La. 1030, 123 So. 664 (1929).

[48] Ibid., 281 U.S. 370, 50 S.Ct. 335, 74 L.Ed. 913 (1930).

[49] Squires v. Inhabitants of City of Augusta, 155 Me. 151, 153 A. 2d 80 (1959).

> . . . satisfied that a properly worded enabling act, authorizing municipalities to expend funds for the transportation of children to private schools not operated for profit, if one were in fact to be enacted by the legislature, would meet constitutional requirements.

The court decided that since the legislature had not so legislated, the municipality had exceeded its authorized powers in attempting to provide transportation for non-public school pupils.

Maryland. In 1938 the Supreme Court of Maryland[50] upheld the validity of a statute which provided that children attending non-public schools could ride buses to and from the nearest points to their homes and their schools on the regular bus routes. The court found that such use of the public school buses was not a misuse of public funds and did not violate the Maryland prohibition against the use of state funds for a private purpose. The same court[51] also validated a statute which provided that the county commissioners could appropriate a sum each year to assist in payment for transportation of children to and from non-public schools, ruling that it was appropriate for the county commissioners to decide to pay and actually pay a compensation to parochial schools for the transportation to schools of pupils attending the schools meeting compulsory attendance requirements. The opinion concluded that:

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[50] Board of Education of Baltimore County v. Wheat, 174 Md. 314, 199 A. 628 (1938).

[51] Adams v. County Commissioner of St. Mary's County, 180 Md. 550, 26 A. 2d 377 (1938).

> If the county's carrying the children of parochial schools by any means is a valid action, as we have decided in the Wheat case, one not necessarily to be considered a gift to the schools, the joining with the schools in supporting facilities already provided would seem valid. The decision in the Wheat case that the public funds may be expended to aid the children appears to validate the action questioned in this one.

Massachusetts. In an 1867 opinion[52] the Massachusetts court defined a private school as one supported and managed by individuals as distinguished from a public school. The court decided that a legislative enactment which authorized a town to support a free school which was founded by private charity was in violation of the constitution. The fact that the school was under the control of the trustees not exclusively elected by the taxpayers was in violation of provisions requiring that all money appropriated for the support of common schools must be applied to schools conducted under the appropriate authorities of the towns and cities. As a sequel, in 1913 the court was asked by the legislature whether the constitution prohibits the appropriation of public funds to schools partly under sectarian or ecclesiastical control. The court answered that public school funds could not be appropriated for the use of any sectarian school, but that there was no constitutional prohibition against making such appropriations to institutions of higher learning.

In 1955 the Massachusetts court[53] held that a town school committee could be compelled to provide transportation for pupils attending private elementary schools to the same extent that transportation was provided to pupils attending public elementary schools. The court said

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[52] Jenkins v. Andover, 103 Mass. 94 (1869).

[53] Quinn v. School Committee of Plymouth, 332 Mass. 410, 125 N.E. 2d 410 (1955).

> We think that by enactment the legislature intended to make available to children in private schools transportation of the same extent as the school committee within its statutory powers could make transportation available to children in public schools. The question is not what the committee can be made to do. The requirement imposed is that there be no discrimination against private school children in what the committee in its discretion decides to do.

Michigan. A grant of land was made by the state to an educational corporation, with the provision that the proceeds of the grant should be used exclusively for the erection of buildings. Through other means the corporation secured all the buildings it needed and devoted the proceeds of the sale of lands to the general needs of the school. When the state and the bonding authorities sued because the grant was misappropriated, the court[54] held that it was not necessarily required that the buildings be obtained by the exact funds received by the sale of the state granted lands.

Minnesota. The Supreme Court of Minnesota[55] held that a Roman Catholic school operated by a church, but which was open to all children regardless of belief, was an institution of purely public charity and was therefore exempt from taxation. The chief justice pointed out in his concurring opinion that the school should be exempt because it was "a seminary of learning" rather than a public charity. In a 1923 opinion, the Minnesota court[56] decided that under constitutional provisions, all property of academies and institutions of learning was exempt from taxation.

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[54] Kiefer v. German-American Seminary, 46 Mich. 636, 10 N.W. 50 (1881).

[55] Hennepin County v. Grace, 27 Minn. 503, 8 N.W. 761 (1881).

Mississippi. In Otken v. Lamkin,[57] the Mississippi court held unconstitutional an act which gave to children the same share of public funds for attendance at a private school which a school would receive for attendance at a public school. The court maintained that the constitution required

> . . . that no portion of the school fund can be diverted to the support of schools which, in their organization and conduct, contravene the general scheme prescribed. That is to say, the fund must be applied to such schools only as come within the uniform system devised, and under the general supervision of the state superintendent and the local supervision of the county superintendent, are free from all sectarian religious control, and ever open to all children within the ages of five and twenty-one years.

When a Mississippi statute which made appropriations to a state textbook fund to provide for the distribution of textbooks to all qualified elementary school pupils was challenged, the supreme court[58] ruled that the money was being spent to discharge the state's obligation to educate all its children, hence such use of state funds was not in violation of provisions of the constitution. The court stated that such use of funds did not divert "school or other educational funds" of the state as prohibited in the constitution because it was not a charge against any particular funds earmarked for school purposes. The court also determined that lending of books to pupils in private and sectarian institutions did not constitute an improper pledge or loan of the state's credit. By utilizing such books, no part of the school fund was considered to be in the control of a private institution. The court explained in its opinion that it was convinced that in this case

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[56] State v. Carleton College, 154 Minn. 280, 191 N.W. 400 (1923).

[57] 56 Miss. 758 (1879).

[58] Chance v. Mississippi State Textbook Rating and Purchasing Board, 190 Miss. 453, 200 So. 706 (1941).

> The appropriation for schools is entirely separate. . . .The use of the textbook fund constitutes no charge against any public school funds, properly so called, nor against any trust funds available for particular schools or educational purposes. . . . The books belong to, and are controlled by, the state; they are merely loaned to the individual pupil therein designated. . . . The privilege of requisition by qualified private or sectarian schools for the loan of such books to its pupils does not place in such school the 'control of any part of the school or other educational funds' of the state. The mere availing of benefits of an appropriation lawfully made does not result in a control of such funds. Its use is controlled only by the purpose for which the legislature designated it. Nor is the loaning of such books under such circumstances to the individual. . . a direct or indirect aid to the . . . schools. . . .

Missouri. In 1873 the Missouri Supreme Court[59] invalidated an agreement which had given the Sugar Tree Grove Academy a portion of the school funds of the state. The court concluded that the adoption of the state constitution in 1865 and subsequent acts of the legislature established a completely different arrangement for distribution of school funds and appropriation to the school, formerly lawful, was no longer proper.

The matter of use of public money to support a sectarian school was again litigated before the Missouri court in 1941.[60] A school which previously had been a Roman Catholic school was taken over by a public school board and was supported from public funds. Textbooks and the course of study prescribed by the state superintendent were used, but otherwise the school continued much in the same manner as it had while it was a parochial school. A taxpayer sued for an injunction, and claimed that public money was being used to support a sectarian school. Evidence was presented that the school was in fact operated as a Catholic school, and was referred to in the community as the Catholic school. It was found that sectarian religion was taught in the school by the teachers. The court in issuing a restraining order recognized that the supporters of the school

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[59] Waller v. Everett, 52 Mo. 57 (1873).

> . . . might argue that this St. Cecilia school is controlled by the school board and not by the church, but we find from the record that nominal supervision by the school board is an indirect means of accomplishing that which the constitution forbids. The statement of the county superintendent of schools that "We put the St. Cecilia Parochial School under the public school system" is fully born out by the facts in evidence. It was not only put there but it was maintained by public funds.
>
> The members of the school board have unintentionally but unquestionably violated our constitutional provisions.

In another case involving tuition payments the Missouri court[61] went into great detail to establish that the school to which payments were being made, although called a public school, was in actuality a sectarian school. The tuition arrangement, under which funds from public taxes were paid for school children at a school of their choice, whether Protestant or Catholic, was declared unconstitutional on the grounds that public funds were being used to support a sectarian school.

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[60] Harfst v. Hoegen, 349 Mo. 808, 163 S.W. 2d 609, 141 A.L.R. 1136 (1941).

[61] Berghorn v. Reorganized School Dist., 364 Mo. 121, 260 S.W. 2d 573 (1953).

In a transportation case the supreme court[62] found that payment for transportation of pupils to private schools out of the general revenue fund of the state and the public school fund was in violation of constitutional provisions directing that such funds were ". . . to be apportioned and distributed for the support of the free public schools, as provided by law. . . ." The court declined to agree that money appropriated to provide transportation to parochial schools helps to support the free public schools.

In a taxation suit the court[63] found that the particular school in question was truly a tax exempt institution because ". . . the properties are actually and exclusively used for such school and purely charitable purposes, and such uses do not have for their purposes the making of any profit." The court agreed that tax exempt status should be strictly construed, that taxation should be the rule and not the exception, but pointed out that each case is peculiar and should be decided on the basis of the organization involved.

Nebraska. An academy in Nebraska was asked to pay taxes on land used for growing food for the school. When asked to enjoin the taxation of this property as property exempt under constitutional and statutory provisions the court[64] supported the school's position. The court found that

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[62] McVey v. Hawkins, 364 Mo. 44, 258 S.W. 2d 927 (1953).

[63] Midwest Bible and Missionary Institute v. Sestric, 364 Mo. 167, 260 S.W. 2d 25 (1953).

> It is the exclusive use of the property which determines its exempt character. If it is devoted exclusively for educational purposes, it is not liable to taxation, unless such use is not direct, but remote. . . .the sole constitutional and statutory condition imposed on the exemption is that the property shall be devoted exclusively to school or some other specified exempt purpose, which condition the proofs in the case disclose has been fulfilled, and the property in question was illegally assessed and taxed.

The Nebraska court[65] also ruled on one occasion that schools (even commercial schools) that teach the common branches of knowledge are entitled to a constitutional exemption for the property that is actually used as a school. In 1936 the court[66] declared that municipalities may not tax properties which are exempt from state taxation under a constitutional provision.

In an aid case in 1932 a school district sued for its alleged share of the public school fund. The state superintendent of public instruction, according to the court,[67] was not required to recognize the district as a public school district when the school was clearly a sectarian school, although it was certified as a public, accredited school. The court held that payment of public funds to this district would be in violation of a state constitutional prohibition protecting the educational trust funds of the state which were created for secular public school purposes.

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[64] Academy of the Sacred Heart v. Irey, 51 Neb. 755, 71 N.W. 752 (1897).

[65] Rohrbough v. Douglas County, 76 Neb. 679, 107 N.W. 1000 (1906).

[66] East Lincoln Lodge v. City of Lincoln, 131 Neb. 379, 268 N.W. 91 (1936).

[67] State ex. rel. Public School District No. 6 of Cedar County v. Taylor, 122 Neb. 454, 240 N.W. 573 (1932).

Nevada. The Nevada Supreme Court[68] in an 1882 case construed quite strictly a constitutional prohibition against the use of public funds for sectarian purposes. The court held that appropriations to support educational efforts for inmates of an orphanage could not be supported, since "such contribution would be used for the relief and support of a sectarian institution and in part, at least, for sectarian purposes."

New Hampshire. The New Hampshire Supreme Court was asked on several occasions to arbitrate tax exemption cases. In 1876 the court enunciated in Warde v. Manchester[69] that

> In discharge of the duty imposed upon the legislature to encourage education it has been their practice to exempt from taxation without distinction of sect, denomination, or party, all houses of public worship, school houses, and seminaries of learning.

In another case[70] the court explained that a

> "seminary" is a place of education. Two meanings — one referring to the institution, the other to the building, in which the institution performs its functions . . . Phillips Exeter Academy may mean the institution having that name or the building used by it for school purposes. . . .Buildings actually used as a seminary of learning are tax exempt.

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[68] State ex. rel. Nevada Orphan Asylum v. Hallock, 16 Nev. 385 (1882).

[69] 56 N.H. 508 (1876).

[70] Town of New London v. Colby Academy, 69 N.H. 443, 46 A. 743, (1899).

However, the court pointed out that the total property of an educational institution was not necessarily tax exempt. The court observed that

> the total value of property which the defendants and other similar institutions in the state are authorized to hold must be very large. . . .Exemption from taxation of the real estate of these institutions would be a great inducement to them to invest their funds in local real estate. If they yielded to the inducement, an unequal burden of taxation would be thrown upon other property holders. . . .It cannot be presumed that the legislature intended to aid such institutions to this extent.

In a complicated tax exemption case[71] the court held that certain properties used exclusively for school purposes were tax exempt. Properties used for auxiliary purposes were considered taxable, and property used partly for educational purposes and partly for service use was considered partially tax exempt, the amount of tax to be computed on the basis of the amount of use for educational purposes.

The matter of taxation to build a school house for an academy was considered by the New Hampshire court in an 1887 case.[72] The court declared that a special legislative act which authorized a town to pay for the erecting of a school building to lease free of charge to an academy was not unconstitutional taxation for a private purpose. The court indicated that the test of public use was not solely the erection of the building, but rather whether there was a common and equal right free from unreasonable discrimination. The court declared that the provisions of the lease to the academy insured that public use would not be violated.

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[71] Trustees of Phillips Exeter Academy v. Exeter, 90 N.H. 472, 27 A. 2d 569 (1940).

[72] Holt v. Town of Antrim, 64 N.H. 284, 9 A. 389 (1887).

New Jersey. The New Jersey court of last resort was asked by a taxpayer to declare unconstitutional a statute which permitted boards of education to contract for transportation of children to and from public and non-public schools. It was charged that the statute was unconstitutional as taking public money for a private purpose. It was also charged that the provision of transportation gave direct or indirect aid to sectarian schools, and/or made unlawful gifts to individuals. In its opinion in Everson v. Bd. of Ed. of Township of Ewing[73] the court found that the providing of transportation in this way was not unconstitutional. When the U.S. Supreme Court affirmed the New Jersey court's ruling the Court indicated that the provision for transportation did not materially aid the school, but merely protected and helped young children to meet attendance requirements in accredited schools.

In 1959 the New Jersey court[74] indicated that a regional high school district could under statutory power, provide transportation to children of elementary age who lived and attended school along the established routes of the high school district.

The matter of tax exemption as a form of aid to non-public schools has been before the New Jersey courts on several occasions. In a case[75] involving an incorporated exclusive girls' school, allegedly run not-for-profit, the court found that its purposes were not basically charitable, that the school served a wealthy clientele, and therefore was not eligible for tax exemption. The court described the school in this case, as not a ". . . public work, essentially of service . . . without hope . . . of renumeration for the service. . . ." Rather the school yielded a substantial profit. In another tax suit,[76] however, the court ruled that the residence property of teachers teaching in a parochial school could be exempted from taxes because the school was not conducted for a profit.

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[73] 133 N.J.L. 350, 44 A. 2d 333 (1945), affd. 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711, reh. den. 330 U.S. 855, 67 S.Ct. 962, 91 L.Ed. 1297 (1946).

[74] Board of Ed. of Central Regional High School District of Ocean County v. State Bd. of Education, 27 N.J. 76, 141 A. 2d 542 (1959).

[75] Dwight School v. State Bd. of Tax Appeals, 114 N.J.L. 594, 177 A. 875 (1935), affd. 117 N.J.L. 113, 187 A. 36 (1936).

Tax exemption was denied to a private academy in New Jersey, whereupon the academy changed its charter to declare that it was to operate on a nonprofit basis. However, the supreme court[77] on the second hearing again held that the institution was not fundamentally philantropic and charitable. The academy enjoyed substantial tuition charges, according to the court, and

> Exemptions from the burdens of taxation, which the great masses of the people are called upon to sustain, as a requisite of civil government, are only favored in legislation, upon the theory that the concession is due as *quid pro quo* for the performance of a service essentially public, and which the state thereby is relieved *pro tanto* from the necessity of performing, such as works of charity and education freely and charitably bestowed, as evidenced by the legislature under consideration . . . Without that concurring prerequisite, an exemption becomes essentially a gift of public funds, at the expense of the taxpayer, and indefensible both under any public policy of equal taxation, and any constitutional safeguard against illegal taxation.

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[76] *Chatham v. Sisters of Charity*, 92 N.J.L. 409, 105 A. 204 (1918).

[77] *Carteret Academy v. State Bd. of Taxes and Assessment*, 102 N.J.L. 525, 133 A. 886, affd. 104 N.J.L. 166, 138 A. 919 (1927).

The same court indicated that "the burden is upon the one claiming an exemption to establish the rights."[78] In Bancroft School the court found that the high fees charged, and the considerable vacation taken by the students, gave a commercial aspect to the school which was certainly not charitable, even though the greatest number of the students were mental defectives.

New York. The New York Supreme Court held in a 1910 case[79] that a contract which required a lease of the public waterworks to provide free water to all school houses, including parochial schools, was not in violation of the New York constitution. The contract requirement did not, as was charged, lend the credit of the state to any school under the control of a religious denomination, because under the lease arrangement the individuals controlling the water rights owned the water and might even give it away.

In an early case (1890) involving exemption from taxation the New York court[80] held that a parochial school was not exempt from taxation when the property was not properly owned by a religious society. The court ruled that to be tax exempt the property would have to belong to duly incorporated religious society. Another New York court held in a

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[78] Bancroft School v. State Bd. of Taxes, 10 N.J. Misc. R. 656, 160 A. 390 (1932).

[79] St. Patrick's Church Society of Corning v. Heerman's, 68 Misc. Rep. 487, 124 N.Y.S. 705 (1910).

[80] Church of St. Monica v. New York, 119 N.Y. 91, 23 N.E. 294, 7 L.R.A. 70 (1890).

1958 case[81] regarding tax exemption that tax exemption could be extended to homes in which faculty members and other employees lived, if the school itself was tax exempt. The fact that the school had not filed for exemption of its homes in previous years did not disqualify the current request for exemption. In supporting the general rule of tax exemption for educational institutions the court quoted another justice who said:

> Education is declared to be the function of the state. The state may, and does, provide many of the educational processes. It also may, and does, delegate its function in that respect to private corporations under suitable regulations. In such instances, real property of the delegates, used for the purposes of its charter, is, in fact devoted to a public purpose and thereby becomes quasi-public in nature. Non-taxation of public buildings and properties is not an act of grace but is a basic principle of our law; it is the rule and not the exception. Thus, school and college properties may be said to receive their rights of tax exemption, not as acts of grace from the sovereign, nor as personal exceptions to the rule that all real property bear its share of the cost of government, but both upon the principle of non-taxation of public places and as a quid pro quo for the assumption of a portion of the function of the state. Such a situation calls for a reasonable construction of the exemptive statute. . . .

In Sargent v. Board of Education[82] the New York court held that appropriation of municipal funds for the secular education of orphans who were inmates of a sectarian orphanage was not in violation of constitutional prohibitions against aiding sectarian schools. The legislature recognized, said the court, that the education of the orphans was most practicable within the orphanage, and therefore the appropriation was justified.

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[81] Pratt Institute v. Boyland, 174 N.Y.S. 2d 112 (1958).

[82] 177 N.Y. 317, 69 N.E. 722 (1904).

In 1963 a New York court[83] was asked to compel a public superintendent of schools to provide home instruction for a pupil who had been a student at a parochial school, but could not attend the parochial school for a period of time because of rheumatic fever. According to testimony, the public school officials considered the child a pupil at a parochial school because the parents indicated that the child would return to the parochial school when recovered. The court, however, held that the school officials, under statutes, had a responsibility to provide home teaching. The court indicated that such provision would not violate constitutional provisions which proscribe use of public funds for a sectarian school, using the following language:

> . . . the furnishing of home teaching to Kathleen Scales is not "directly" in aid or maintenance of her parochial school. . . . But does it constitute indirect aid to that school? The Court thinks not. The benefits of home teaching will innure solely to the pupil. . . .It is difficult to conceive how the parochial school will obtain any real advantage from it. The fact that home teaching will enable petitioner's daughter to retain her level of achievement . . . would seem to be no financial aid to the parochial school.
>
> Any benefits accruing to the parochial school, if indeed there be such, would seem too slight and remote to constitute indirect aid.

In a case involving free textbooks and supplies to children of parochial schools the New York courts[84] have concluded that the action violates the constitutional prohibitions against aid to sectarian schools. The court concluded that the

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[83] Scales v. Board of Education of Union Free School Dist. No. 12, Town of Hempstead, 245 N.Y.S. 2d 449 (1963).

[84] Smith v. Donahue, 202 App. Div. 656, 495 N.Y.S. 715 (1922).

> . . . State will not interfere with nor assist, education in sectarian schools. As the state does not recognize parochial schools as part of its educational system, and books furnished for use of pupils are furnished to schools, and not to pupils, statutes do not authorize the board of education to furnish books to parochial schools.

The court explained that even if a statute were worded so that the books would be given to the pupil, it would still be unconstitutional action, as the aid would then be an "indirect" aid to sectarian schools, which is also prohibited.

The matter of providing transportation for children who do not attend the public schools has appeared before the New York courts on several occasions. In Judd,[85] a 1938 case, the New York supreme court declared that the expenditure of public funds for the transportation of pupils to schools under the ". . . control or direction of any religious denomination or in which any denominational tenet or doctrine is taught, is repugnant to our fundamental law, unconstitutional and void." The Constitutional Convention of 1938, however, included the following provision[86] regarding aid to non-public schools which was subsequently approved by the people:

> Neither the state nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught, but the legislature may provide for the

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[85] Judd v. Board of Education of Union Free School Dist. No. 2, Town of Hempstead, Nassau Co., 278 N.Y. 200, 15 N.E. 2d 576, 118 A.L.R. 789 (1938).

[86] N.Y. Const., Art. 11, Sec. 4.

transportation of children to and from any school or institution of learning.

After this constitutional change the New York courts held that the commissioner of education had the power to require school districts to provide transportation for pupils residing within a district to the nearest parochial school.[87] According to the Commissioner of Education of New York, school districts must provide the transportation if the students live within the mileage limits provided by the legislature,[88] and the transportation should be provided to the nearest parochial school of the desired denomination.[89] In another case[90] in which the provision of transportation was challenged under the principle of Judd, the court pointed out that the constitutional amendment had changed the doctrine. The court observed that ". . . the people of the state of New York have determined that the use of public funds for transportation to nonpublic schools is a constitutional expenditure."

Thus courts in New York have as a result of the constitutional action upheld the provision of transportation.[91] In 1960 the New York courts[92] upheld the right of the voters of a school district to provide transportation by railroad to Catholic, Hebrew, and Seventh Day Adventist schools. The court held that the location of the schools in the New York City area made the 35 mile limit imposed reasonable, as possessing the "adjacent" status the statute required.

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[87] Application of Board of Education of Union Free School District, No. 9, Town of Saugerties, 199 Misc. 631, 106 N.Y.S. 2d 615 (1951).

[88] Matter of Appeal of Central High School District No. 2, Town of Hempstead, 73 St. Dept. 25 (N.Y.Ed., 1952).

[89] Matter of Appeal of Edward Walck, 73 St. Dept. 110 (N.Y.Ed., 1952).

[90] Application of Board of Education of Central Dist. No. 1 of Towns of Allston, Clifton Park and Charlton, Town of Glenville v. Allen, 17 Misc. 2d 1080, 192 N.Y.S. 2d 186 (1959).

[91] Application of Bd. of Ed. of Union Free School Dist. No. 18, Town of Hempstead, Nassau County, 198 N.Y.S. 2d 151 (1960).

North Carolina. The Supreme Court[93] of North Carolina held in a tax exemption suit that the legislature may exempt school property held for educational, scientific, religious, or charitable purposes, but the legislature has no power to exempt property held by schools for business or commercial purposes. In another case,[94] the court held that the county school fund must be protected against diversion of the public school property to other than public school purposes and indicated that a questioned appropriation was invalid.

Ohio. In an Ohio case[95] involving a will which gave a grant of money to a village to establish a Protestant school, the court held that the village could not participate in the benefits of the will to build the school. The village, said the court, would have to issue bonds and levy taxes to support the school after its inception, and this would involve prohibited allocation of public funds to support a sectarian school.

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[92] Application of Silver, 205 N.Y.S. 2d 650 (1960).

[93] Sir Walter Lodge v. Swain, 217 N.C. 632, 9 S.E. 2d 365 (1940).

[94] Boney v. Board of Trustees, 229 N.C. 136, 48 S.E. 2d 56 (1948).

[95] Findley v. City of Conneaut, 145 Ohio St. 480, 62 N.E. 2d 318 (1945).

The Ohio Supreme Court[96] upheld tax exemption for a school which was founded by private donations. The court held that the school was nonprofit and therefore could be considered an institution of "purely public charity" and was therefore tax exempt. In another case the Ohio court[97] held that homes owned by a preparatory school for the use of faculty members were not purely public charity and the homes were not exempt as school property. In a tax case[98] involving a girls' school at which high tuition was charged the court found the school eligible for tax exemption because it did extend some of its benefits to the public at large. Since ". . . maintenance of a school for the benefit of the public is a 'charity'" the school could be considered exempt as the institution was not operated for profit.

Oklahoma. The Oklahoma court[99] interpreted the state constitutional provision which provided tax exemption to schools as being broadly construed to apply to all property used for educational purposes. The court explained that

> The provisions specifically exempt from taxation all property used 'exclusively' for schools or colleges. They make no mention as to whether they are private schools or public schools. Neither is there any mention made as to whether or not they shall or shall

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[96] Gerke v. Purcell, 25 Ohio St. 229 (1874).

[97] Western Reserve Academy v. Board of Tax Appeals, 153 Ohio St. 133, 91 N.E. 2d 497 (1950).

[98] College Preparatory School v. Evatt, 144 Ohio St. 408, 59 N.E. 2d 142 (1945).

[99] Board of Com'rs of Tulsa County v. Tulsa Business College, 150 Okla. 197, 1 P. 2d 351 (1931).

> not be run for a profit. The requirement is that they shall be used exclusively for schools. . . .

Regarding transportation the Oklahoma court[100] held that those holding a street car franchise could be required to provide the reduced rate required for students to those attending non-public as well as public schools. The court commented that "To say that the State is hostile to all schools except the public schools of the state or those carried on as State institutions is not borne out by the record."

In a 1963 transportation case[101] the Oklahoma court held that since the constitution ". . . prohibits the use of public money or property for sectarian or parochial schools," transportation to the non-public schools on public school buses was in violation of the state constitution. Earlier, in 1942, the court[102] had ruled against the constitutionality of a legislative act which required the school board to furnish transportation to students attending non-public schools. In the earlier opinion the following statements were made:

> It is urged that the present legislative act does not result in the use of public funds for the . . . support of this sectarian . . . school 'as such', that such benefit as flows from these acts accrues to the benefit of the individual child or to a group of children as distinguished from the school as an organization. That argument is not impressive. . . .It is true that the use of public money and property aids the child, but it is no less true that practically every proper expenditure for school purposes aids

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[100] Oklahoma Ry. Co. v. St. Joseph's Parochial School, 33 Okla. 755, 127 P. 1087 (1912).

[101] Bd. of Educ. for Independent School Dist. No. 52 v. Antone, 384 P. 2d 911 (Okla., 1963).

[102] Gurney v. Ferguson, 190 Okla. 254, 122 P. 2d 1002 (1942), app. dism. 317 U.S. 588, 63 S.Ct. 34, 87 L.Ed. 481, reh. den. 317 U.S. 717, 63 S.Ct. 153, 87 L.Ed. 564 (1942).

> the child. . . .If the maintenance and operation of the bus and the transportation of pupils is in aid of the public schools, then it would seem necessarily to follow that when pupils of a parochial school are transported that such service would likewise be in aid of that school.

Oregon. In a 1961 case[103] the Oregon Supreme Court was asked to rule on the question of providing the parochial and private school children of the state with free textbooks. The court held that providing free textbooks was a violation of the Oregon constitution which prohibited the use of public monies "for the benefit of any religeous (sic) or theological institution. . . ." The court explained that the

> . . . so called 'child benefit theory' has been applied in other cases in which the expenditure of public funds is made for the purpose of meeting the educational needs of pupils, including those attending parochial schools. The difficulty with this theory is, however, that unless it is qualified in some way it can be used to justify the expenditure of public funds for every educational purpose, because all educational aids are of benefit to the pupil. . . .
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> The furnishing of textbooks . . . clearly constitutes an educational aid. In the Everson case the expenditure for the transportation of parochial school pupils was upheld on the theory that the state could provide for the protection of all school children from traffic hazards irrespective of the religious or public character of the schools which they attended. Assuming that the court's reasoning in Everson is sound, it is not applicable to the case at bar. The expenditure of public funds for textbooks supplied to pupils of parochial schools is clearly identified with the educational process, and does not warrant the assumption made in the Everson case that the expenditure is for the general welfare thus justifying the use of the state's police power.

Pennsylvania. The Pennsylvania courts dealt with the matter of special appropriations to non-public educational and charitable institutions on several occasions. The court[104] found that the reservation made in the constitution that no appropriations could ever be made to sectarian institutions was completely within the power of the people to reserve. The superior court[105] has upheld the right of the legislature to make special appropriations to nonsectarian private institutions. For purposes of receiving or not receiving appropriations, the Pennsylvania court[106] defined a sectarian school as any one established, controlled, or maintained by a group teaching sectarian doctrines. The court[107] affirmed the validity of appropriations when it designated a proper appropriation as one in which money was designated to be withdrawn from the public treasury for a specific purpose.

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[103] Dickman v. School Dist. No. 62C, Oregon City, 232 Ore. 238, 366 P. 2d 533, 93 A.L.R. 2d 969 (1961), cert. den. 371 U.S. 823, 83 S.Ct. 41, 9 L.Ed. 2d 62 (1962).

In a transportation case the court[108] held that a school board did not have a duty to provide transportation for children to parochial schools in the absence of a permissive statute. The court refused to comment upon the constitutionality of providing transportation if it were required by statute.

In cases involving membership in special public school classes, while the pupil was actually in regular attendance in a non-public school, the court[109] held that opening memberships by statute to all pupils in a district to a manual training class, even if the basic training of the child was in a parochial school, was not in violation of a constitutional prohibition against aid to sectarian schools. The opinion emphasized that such a special class was open to all, regardless of where they received their elementary school training. The court agreed that school boards could maintain special departments rather independent of the public school, with open membership to all, and not thereby actually aid sectarian schools.

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[104] Collins v. Martin, 290 Pa. 88, 139 A. 122 (1927).

[105] Busser v. Snyder, 282 Pa 440, 128 A. 80, 37 A.L.R. 1515 (Pa., 1925).

[106] Hysong v. Gallitzin Borough, 164 Pa. 629, 30 A. 482 (1894).

[107] Commonwealth v. Perkins, 342 Pa. 529, 21 A. 2d 45 (1941), affd. Perkins v. Commonwealth of Pennsylvania, 314 U.S. 586, 62 S.Ct. 484, 86 L.Ed. 473 (1942).

[108] Connell v. Board of School Directors of Kennett Township, 356 Pa. 585, 52 A. 2d 645, app. dism. 332 U.S. 748, 685 S.Ct. 26, 92 L.Ed. 335 (1947).

On several occasions the Pennsylvania court has dealt with cases involving tax exemption of non-public schools. Several cases involved the state constitutional provision which described as "purely public charity" those schools which could be exempted from taxes. The court interpreted "purely" in one case[110] to mean that the institution in question was "completely, entirely, and unqualifiedly" an institution of charity. Another decision[111] indicated that such an institution did not have to be completely controlled by the state to be truly an "institution of public charity" but that it would not be administered for private gain. The court held in Thiel College[112] that an institution open only to those who can pay tuition, and open only to those whom the trustees desire to admit is not an institution of public charity. In another seminary case[113] the court held that a school charging fees, with selected admissions, even though the profit of the school was turned over to a church for charity, could not be considered an institution of purely public charity.

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[109] Commonwealth ex. rel. Wehrle v. Plummer, 21 Pa. Dist. R. 182 (1911).

[110] White v. Smith, 189 Pa. 222, 42 A. 125 (1899).

[111] In Re Hill School, 370 Pa. 21, 87 A. 2d 259 (1952).

[112] Thiel College v. Mercer County, 101 Pa. 530 (1882).

The Pennsylvania court[14] ruled, in another case, that a parochial school open to anyone who wished to attend, and recognized as a standard school, was a public charity within the meaning of the constitution and was therefore tax exempt. But a school maintained by tuition and rental fees, even though operated not for profit was not clearly a public charity, according to the court,[115] and was not eligible for tax exemption. In a 1961 case[116] the court held that a ". . . . school was not entitled to exemption where tuition charged its students paid the entire cost of its operation and maintenance and very few of the students paid less than the full cost of education. . . ." because the court did not feel that such a school was a "public charity."

Rhode Island. The Rhode Island Supreme Court[117] has held that the state constitution permits the legislature to exempt certain educational property from taxation, and that property exempted in a charter is justly exempt. The court also recognized, in another case,[118] that free parochial school buildings may be exempt, but a chapel nearby which was not used for educational purposes was not exempt.

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[113] Moravian Seminary v. Northampton, 2 Lanc. L. 281 (1881).

[114] Goeser v. Voris, 41 Pa. Co. Ct. 504 (1913).

[115] Harrisburg v. Harrisburg Academy, 26 Pa. Super. Ct. 262 (1904).

[116] Appeal of Woods Schools, 195 Pa. St. 531, 171 A. 2d 897 (1961).

[117] Brown University v. Granger, 19 R.I. 704, 36 A. 720, 36 L.R.A. 847 (1897).

South Dakota. In Haas[119] the South Dakota Supreme Court held that a parochial school was not part of the public school system, and a statute which required boards to furnish books for students in public schools did not authorize the board to provide such books for parochial school students. The court did not consider the constitutionality of the issue, but decided that the statute applied exclusively to public schools.

In a case involving tuition payments[120] it was held that such payments could not be made to non-public schools on the ground that certain students would benefit the state later as teachers. The court pointed out that if tuition could be paid for some there was no reason why it ultimately could not support the whole institution. Since the institution in question was a Presbyterian institution, payment to it for services rendered would be in aid of the school and would therefore violate the constitution. In another case[121] involving tuition the court held that when the public schools were closed in a district, and payments to parents for cost of sending their children to another public school were authorized, the school officials could not authorize payment to parents who chose to send their children to a religious private school to meet compulsory attendance requirements.

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[118] Re Pawtucket, 24 R.I. 86, 52 A. 679 (1902).

[119] Haas v. Independent School Dist. No. 1 of Yankton, 69 S.C. 303, 9 N.W. 2d 707 (1943).

[120] Synod of Dakota v. State, 2 S.D. 366, 50 N.W. 632 (1891).

[121] Hlebanja v. Brewe, 585 S.D. 356, 236 N.W. 296 (1931).

Tennessee. The Tennessee Supreme Court[122] has ruled that the tax exemption extended to educational corporations does not necessarily depend upon whether or not the property is actually used in education. The fact that income derived from the property is devoted to educational purposes is sufficient to warrant the exemption. The exemption from taxation, according to the court,[123] can be extended even if the institution is a profitable corporation, but the property must be used exclusively for educational purposes.

Texas. The matter of aid to non-public schools through tax exemption was dealt with in a number of cases in Texas. In 1880 the Texas court[124] held that a school building which was also the residence of the owner was not used exclusively for school purposes and therefore was not eligible for a constitutional tax exemption. In an 1885 case,[125] however, the same court held that all land and property used in connection with a Catholic school was exempt, since it was exclusively used for educational ends. Ursuline provided the authority for a change of exemption status in the property involved in Red v. Johnson, which was granted in Red v. Morris.[126]

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[122] Vanderbilt University v. Chaney, 116 Tenn. 259, 94 S.W. 90 (1905).

[123] State ex. rel. Davidson County v. Waggoner, 162 Tenn. 172, 35 S.W. 2d 389 (1931).

[124] Red v. Johnson, 53 Tex. 284 (1880).

[125] Cassiano v. Ursuline Academy, 64 Tex. 673 (1885).

Utah. When the legislature provided that credit would be given for a stipulated amount of teaching time in private schools, the act was challenged as being in violation of the constitutional prohibition against aid to church schools. In the resulting case,[127] the supreme court declared that the action was not violative of the constitutional prohibition or of the constitutional provisions guaranteeing religious liberty.

Vermont. The Vermont supreme court, in 1961, was asked to rule on the validity of tuition payments by a town district to a Roman Catholic high school, in Swart v. South Burlington Town School District.[128] A Vermont statute provided that each school district must maintain a school or pay the tuition for students at an outside school selected by the parents. The parents had in this case selected a parochial high school for their children. The court construed the question before it as: "Does the payment of tuition to a religious denominational school by a public entity finance religious institutions, to work a fusion of secular and sectarian education?" The court determined that the school authorities in paying the tuition, ". . . while acting within the literal provisions. . ." of the Vermont statutes ". . . exceeded the limits of the U.S. Constitution," and observed that ". . . the same fundamental law which protects the liberty of a parent to reject the public system in the interest of the child's spiritual welfare enjoins the state from participating in the religious education he has selected."

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[126] 72 Tex. 554, 10 S.W. 681 (1889).

[127] Gubler v. Utah State Teachers Retirement Board, 113 Utah 188, 192 P. 2d 580, 2 A.L.R. 2d 1022 (1948).

[128] 122 Vt. 177, 167 A. 2d 514, 81 A.L.R. 2d 1300 (1961). cert. den. 366 U.S. 925, 81 S.Ct. 1349, 6 L.Ed. 2d 384 (1961).

Virginia. The Virginia Supreme Court held in Almond v. Day[129] that money appropriated to benefit education of war orphans at a secondary school of their choice could not be paid to non-public schools, because it would violate a constitutional prohibition against expending money for any school not under state control. The court found the appropriation unconstitutional in that it made public monies available to sectarian schools. The opinion pointed out that tuition differed from indirect benefits such as transportation and books, because tuition is the "very life blood" of a private institution. The court concluded that payment to sectarian schools would utilize public funds in support of religious institutions, would afford aid to sectarian groups, and would compel taxpayers to pay for the spread of religious beliefs of which they may not approve.

In a 1959 case[130] the Virginia court ruled that if the general assembly desired to utilize permissive authority of the constitution to appropriate funds for education of pupils in nonsectarian private schools it should appropriate such money, under the act, and not expend money otherwise designated for the use of public schools. Money should be specifically appropriated by the legislature to implement tuition grants.

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[129] 197 Va. 419, 89 S.E. 2d 851 (1955).

[130] Harrison v. Day, 200 Va. 439, 106 S.E. 2d 636 (Va., 1959).

Washington. The Supreme Court of Washington dealt with the matter of aid to non-public schools in the form of transportation provisions in two leading cases. In a 1943 case[131] the court declared unconstitutional a statute which commanded the directors of the school districts operating public school buses also to carry children to private schools. The statute was declared unconstitutional because the funds to implement the transportation were derived from the common school fund, which according to the constitution requires that all monies be used for "common school purposes." Carriage of students to sectarian schools also violated the constitutional prohibition of appropriation of public money for the support of any religious establishment, according to the court. The court explained that

> We cannot . . . accept the validity of the argument that transportation of pupils to and from school is not beneficial to, and in aid of, the school. Even legislation providing for transportation of pupils to and from public schools is constitutionally defensible only as the exercise of a governmental function furthering the maintenance and development of the common-school system.

In further explanation as to why the dispensing of funds to implement the statute was invalid the court observed that

> The act does not make a specific appropriation of school funds for carrying out its purpose. But, to carry out its purpose, the directors of school districts must, of necessity, resort to the common school fund. . . .It is clear that the act contravenes. . .

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[131] Mitchell v. Consolidated School District No. 201, 17 Wash. 2d 61, 135 P. 2d 79, 14 A.L.R. 612 (1943).

the constitution in that it necessitates the use of common school funds for other than common school purposes.

Following the opinion in Mitchell, the Washington legislature passed a law which provided that "all children attending school in accordance with the laws relating to compulsory attendance . . . shall be entitled to use the transportation facilities provided by the school district in which they reside." In a subsequent case[132] involving transportation to a "Christian Reformed School," the court declared it to be a sectarian school, and ruled that implementation of the statute would be in violation of the constitutional proscription against the use of public money to support any religious establishment, and the court therefore declared the law unconstitutional.

West Virginia. A West Virginia act which appropriated money to Brooke Academy and its residual trust was declared by the supreme court[133] as being an unconstitutional devotion of public funds to a private purpose.

In 1936 the supreme court[134] declared that amendments to the state constitution allowed the legislature to exempt non-public school property from taxation, even if the school was operated for profit and personal gain. The test to be applied was the test of the property's use for educational purposes.

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[132] Visser et. ux. v. Nooksack Valley School District No. 506, Whatcom County, 33 Wash. 2d 699, 207 P. 2d 198 (1949).

[133] Trustees of Brooke Academy v. George, 14 W.Va. 411, 35 Am. Rep. 760 (1878).

[134] In Re Mountain State College Assessment, 117 W.Va. 819, 188 S.E. 480 (1936).

Wisconsin. The Wisconsin Supreme Court[135] declared as unconstitutional acts which empowered a town to raise by taxation a certain sum which by provisions of the acts would be paid over to the treasurer of a private educational institution. The payment was justified on the basis of the school's benefit to the community. The court concluded however, that incidental benefits to the people of the town resulting from the location of the school within the town was not sufficient justification for use of the taxing power of the town to aid the school.

In another case[136] the Wisconsin court declared that school districts had no authority to pay for the transportation of pupils attending a parochial school under a statute which required that the school district not operating a school pay tuition and transportation for its pupils.

In Van Straten v. Milquet[137] the supreme court ruled that the school district could not be burdened with transportation to schools other than public schools. The court indicated that free education statutes required that free education be provided for everyone and school boards were not authorized to spend money for any other schools. In a

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[135] Curtis v. Whipple, 24 Wis. 350, 1 Am. Rep. 187 (1869).

[136] Costigan v. Hall, 249 Wis. 94, 23 N.W. 2d 495, Reh. den. 24 N.W. 2d 408 (Wis., 1946).

[137] State ex. rel. Van Straten v. Milquet, 180 Wis. 109, 192 N.W. 392 (1923).

1962 case[138] the court declared that provision of transportation to non-public schools wherein religious instruction was conducted was in violation of the constitutional prohibition against drawing public money from the treasury to aid "religious seminaries."

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[138] State ex. rel. Reynolds v. Nusbaum, 17 Wis. 2d 148, 115 N.W. 2d 761 (1962).

CHAPTER IX

SUMMARY AND CONCLUSIONS

I. SUMMARY

The purpose of this study was to determine the legal status of non-public schools in the United States. The Constitutions, statutes, and court records of the fifty states and the federal government were utilized to determine the legal status of non-public schools.

The study of background literature and related research indicated that there was a great amount of writing, in a variety of sources, concerned with non-public schools. The role of the non-public school and an understanding of its place in the American educational scene was a subject of widespread discussion.

The study of state constitutions revealed that there were approximately 250 provisions in the constitutions of the 50 states related to non-public schools. The study of the state codes revealed that in the statutes of the 50 states there were approximately 500 provisions directly related to non-public schools.

The study of court reports of the courts of record of the fifty states indicated that there were approximately 400 cases which were directly or indirectly related to selected problems concerned with the legal status of non-public schools. Two hundred ninety of these cases were used in the final report of the study. The cases were concerned with parental and corporate rights, responsibilities and liabilities, supervision and control, and public aid.

II. CONCLUSIONS

Based upon the study of the background literature and related research, the constitutions of the fifty states, the statutes of the fifty states, and the court decisions as herein reported, conclusions were reached on several topics.

Background Literature and Related Research

1. The role of the non-public school in the American educational scene is a problem that is unsettled. However, there is an increasing amount of discussion of the problem in the literature, perhaps due to the increasing pressure being placed upon public officials for financial aid by some groups interested in non-public schools.

2. Research concerning non-public schools has not been extensive, especially in the area of school law, but the number of doctoral dissertations in this area and related topics is increasing.

Constitutions

1. The provisions of the constitutions of the fifty states concerned with non-public schools represent law which is binding upon non-public schools and public officials dealing with non-public schools, because the constitution itself represents a collection of the desires of a sovereign people.

2. An appropriate constitutional amendment will insure that the will of the people of the state will be carried out in regard to non-public schools, as long as the particular provision does not violate provisions of the Constitution of the United States or the rights of individuals as

guaranteed by the federal constitution.

Statutes

1. The great number of statutory provisions concerned with non-public schools are the law in a particular state until changed by proper action of the legislature or found by the highest court of the state or the U.S. Supreme Court to be unconstitutional.

2. Although particular state courts vary somewhat in the interpretations they have given to their own constitutional provisions and subsequent legislation, generally it can be said that the courts will uphold particular legislation if it does not clearly violate the state or federal constitution and is not an arbitrary and unreasonable action.

3. Appropriate legislation is used in some states to encourage and regulate non-public schools in various facets of their operation.

Court Decisions

The principles of law which were enunciated by the courts in the cases investigated in the study resulted in the conclusions which were classified according to subject matter.

Parental Rights. Those conclusions related to parental rights consist of the following:

1. Parents have a definite right to choose the kind of school which their children will attend, provided that any standards indicated by the legislature or the constitution are met, and the courts will not allow this right to be abrogated.

2. Parents have a right to direct the studies in which their

children will engage to the degree that ultimate choices in curricular patterns belong to the parent as part of their constitutional liberty.

3. Parents have a right to expect that instruction at a non-public school will be given in an acceptable manner, according to the provisions of the charter, catalog, and prospectus of a school, and any other stated or implied promises.

Parental Responsibilities. Those conclusions related to parental responsibility consist of the following:

1. Parents have a responsibility to educate their children at a school which is similar to the schools which are operated by the state if they do not send the children to a public school.

2. Parents have a responsibility to require that their children comply with the regulations of the particular non-public school in which they send their children.

3. Parents have a responsibility to pay for the education of their children according to the terms of the agreement which they enter upon application or entrance to a non-public school.

Parental Liabilities. Those conclusions related to parental liabilities consist of the following:

1. Parents are usually liable for the full amount of a contract for instruction even though the child does not attend school for the full term of the contract.

2. Parents must make themselves and their children aware of the rules, regulations, and terms which make them liable for instruction, room, and board costs at a non-public school.

Corporate Rights. Those conclusions related to corporate rights consist of the following:

1. Non-public schools have a right to exist and can not be arbitrarily forced to close.

2. Non-public schools have a right to contract with any party in any manner in which the two parties agree, in addition to the right of refusing to contract with any individual.

3. Non-public schools can hold property and negotiate assets to the extent permitted by their charters, state laws, or constitutional provisions, or in the absence of these in any amount necessary to carry out the purposes of the school.

4. Non-public schools, when organized under a state charter, can expect the courts to enforce the charter provisions unless the legislature or constitution has reserved the right to amend, revoke, or alter certain provisions of the charter.

Corporate Responsibilities. Those conclusions related to corporate responsibilities consist of the following:

1. Non-public school authorities have a responsibility to protect the interests of those who have founded a particular school.

2. Non-public schools have a responsibility to observe their corporate regulations, and the regulations which the state has placed upon the school.

3. Non-public schools have a responsibility to protect to a reasonable degree the pupils who attend such schools.

4. Non-public schools have a responsibility to meet implied

obligations involved in the operation of a school, as well as stated obligations in contracts, agreements, and advertising.

Corporate Liabilities. Those conclusions related to corporate liabilities consist of the following:

1. Non-public schools are liable for injuries which result from negligence when the school has agreed to take certain precautionary measures and then fails to do so.

2. Non-public schools in the past have enjoyed immunity from tort actions as charitable or religious organizations, but non-public schools are losing this immunity.

Supervision and Control. Those conclusions related to supervision and control consist of the following:

1. The state can regulate and control education in non-public schools under the general police powers of the state, provided that the exercise of such power is not arbitrary or unreasonable.

2. The state can make some curricular requirements upon non-public schools to protect the interests of the people of the state.

3. The state can require that teachers in non-public schools be certified, competent, licensed, and of good character.

4. The state can encourage efforts of non-public schools and the courts will uphold the encouragement. Rulings to prevent discouragement through various means of non-public schools may be sustained.

5. The state cannot require that a non-public school accept a particular student, but the state can require that a school refuse admittance to a student who has not met health regulations.

6. The state can supervise the internal operations of non-public schools to the extent that the state guarantees that contract and charter provisions are being observed.

7. The state can require that non-public schools be licensed if the licensing regulations are reasonable and contribute to the public welfare.

8. The state can supervise the instructional program in non-public schools to a degree because the attendance at the schools is an acceptable substitute for attendance at a public school.

9. Although courts have not been in agreement concerning zoning, the state can require that non-public schools observe zoning regulations.

Public Aid. Those conclusions related to public aid consist of the following:

1. Under the "child benefit theory" and the theory of "public purpose" indirect benefits to the children attending non-public schools such as textbooks and transportation do not violate the provisions of the federal Constitution.

2. Tuition and actual cost of education for a child is not deductible from income taxes, but contributions to non-public schools may be deducted from income tax.

3. Exemption of the property of non-public schools from taxation to varying degrees is a legitimate form of public aid and encouragement of non-public schools. However, the extent of such aid will vary greatly with the particular state court's interpretation of its constitution and legislation.

4. Public monies may not be dispensed directly to sectarian schools.

5. The state courts have interpreted the matter of indirect aid and benefits to non-public schools from state funds in a variety of ways. Carefully worded enabling legislation or a constitutional amendment can remove the reservations of a state court in denying the validity of aid in one case and later allowing such aid.

6. The purchase of services by governments at non-public schools does not always necessarily constitute prohibited aid to non-public schools.

7. The provision of special services and classes to pupils regularly enrolled in non-public schools does not constitute prohibited aid to such schools.

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Massachusetts: Constitution of the Commonwealth of Massachusetts, 1780

Michigan: Constitution of the State of Michigan, 1963

Minnesota: Constitution of Minnesota, 1857

Mississippi: Constitution of the State of Mississippi, 1890

TABLE OF CONSTITUTIONS (Continued)

Missouri: Constitution of Missouri, 1945

Montana: Constitution of the State of Montana, 1889

Nebraska: Constitution of the State of Nebraska, 1875

Nevada: Constitution of the State of Nevada, 1864

New Hampshire: Constitution of the State of New Hampshire, 1784

New Jersey: Constitution of the State of New Jersey, 1947

New Mexico: Constitution of the State of New Mexico, 1911

New York: Constitution of the State of New York, 1938

North Carolina: Constitution of North Carolina, 1868

North Dakota: Constitution of North Dakota, 1889

Ohio: Constitution of Ohio, 1851

Oklahoma: Constitution of the State of Oklahoma, 1907

Oregon: Constitution of Oregon, 1859

Pennsylvania: Constitution of the State of Pennsylvania, 1874

Rhode Island: Constitution of the State of Rhode Island and Providence Plantations, 1842

South Carolina: Constitution of the State of South Carolina, 1895

South Dakota: Constitution of South Dakota, 1889

Tennessee: Constitution of Tennessee, 1870

Texas: Constitution of the State of Texas, 1876

Utah: Constitution of Utah, 1896

Vermont: Constitution of the State of Vermont, 1793

Virginia: Constitution of Virginia, 1902

Washington: Constitution of the State of Washington, 1889

TABLE OF CONSTITUTIONS (Continued)

West Virginia: Constitution of West Virginia, 1872

Wisconsin: Constitution of the State of Wisconsin, 1848

Wyoming: Constitution of the State of Wyoming, 1890

TABLE OF STATUTES

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Alaska: Alaska Statutes, 1962.

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TABLE OF STATUTES (Continued)

Maryland: The Annotated Code of the Public General Laws of Maryland, 1957.

Massachusetts: Massachusetts General Laws Annotated.

Michigan: Michigan Statutes Annotated.

Minnesota: Minnesota Statutes Annotated.

Mississippi: Mississippi Code, 1942, Annotated, Recompiled.

Missouri: Vernon's Annotated Missouri Statutes.

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Nevada: Nevada Revised Statutes.

New Hampshire: New Hampshire Revised Statutes Annotated 1955.

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Pennsylvania: Purdon's Pennsylvania Statutes Annotated.

Rhode Island: General Laws of Rhode Island, 1956.

South Carolina: Code of Laws of South Carolina, 1962.

TABLE OF STATUTES (Continued)

South Dakota: South Dakota Code of 1939, Supplement to South Dakota Code of 1939, 1960.

Tennessee: Tennessee Code Annotated, Official Edition.

Texas: Vernon's Texas Civil Statutes
Texas Penal Code.

Utah: Utah Code Annotated, 1953.

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TABLE OF CASES

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Adams v. County Commissioners of St. Mary's County, 180 Md. 550, 26 A. 2d 377 (1938).

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TABLE OF CASES (Continued)

Berghorn v. Reorganized School Dist., 364 Mo. 121, 260 S. W. 2d 573 (1953).

Bergman v. Bouligny, 82 A. 2d 760 (D.C. Mun. App., 1951).

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TABLE OF CASES (Continued)

Brokaw v. Black-Foxe Military Institute, 216 P. 2d 53 (Cal., 1960); subsequent opinion, 37 Cal. 274, 231 P. 816 (1951).

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TABLE OF CASES (Continued)

Columbia Trust Co. v. Lincoln Institute of Kentucky, 138 Ky. 804, 129 S.W. 113, 29 L.R.A. (NS) 53 (1910).

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Dickey v. Trustees of Putnam Free School, 197 Mass. 468 (1908).

TABLE OF CASES (Continued)

Dickman v. School Dist. No. 62C, Oregon City, 232 Ore. 238, 366 P. 533, 93 A.L.R. 2d 969 (1961), cert. den. 371 U.S. 823, 83 S.Ct. 41, 9 L.Ed. 2d 62 (1962).

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TABLE OF CASES (Continued)

Gubler v. Utah State Teachers Retirement Board, 113 Utah 188, 192 P. 2d 580, 2 A.L.R. 2d 1022 (1948).

Gurney v Ferguson, 190 Okla. 254, 122 P. 2d 1002 (1942), app. dism. 317 U.S. 588, 63 S.Ct. 34, 87 L.Ed. 481, reh. den. 317 U.S. 717, 63 S.Ct. 153, 87 L.Ed. 564 (1942).

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Hlebanja v. Brewe, 585 S.D. 356, 236 N.W. 296 (1931).

Hoadley v. Allen, 108 Calif. App. 468, 291 P. 601 (1930).

Holt v. Town of Antrim, 64 N.H. 284, 9 A. 389 (1887).

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Hood v. Tabor Academy, 296 Mass. 509, 6 N.E. 2d 818 (1937).

Horner Military School v. Rogers, 167 N.C. 270, 83 S.E. 345 (1914).

TABLE OF CASES (Continued)

Horner School v. Wescott, 124 N.C. 518, 32 S.E. 885 (1899).

Hysong v. Gallitzin Borough, 164 Pa. 629, 30 A. 482 (1894).

Incorporated Village of Brookville v. Paulgene Realty Corp., 200 N.Y.S. 126, affd. 218 N.Y.S. 2d 264, 225 N.Y.S. 2d 750, 11 N.Y. 2d 672, 180 N.E. 2d 905 (1960).

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Jenkins v. Andover, 103 Mass. 94 (1869).

Judd v. Board of Education of Union Free School Dist. No. 2, Town of Hempstead, Nassau Co., 278 N.Y. 200, 15 N.E. 2d 576, 118 A.L.R. 789 (1938).

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Kirkpatrick v. Williams, 53 N.M. 477, 211 P. 2d 506 (1949).

Knowlton v. Baunhover, 182 Iowa 691, 166 N.W. 202, 5 A.L.R. 841 (1918).

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Lummus v. Miami Military Academy, 123 Fla. 832, 168 So. 241 (1936).

Lyon v. Sparks, 61 Wash. 348, 112 P. 340 (1910).

TABLE OF CASES (Continued)

Manson v. Culver Military Academy, 141 Ill. App. 250 (1908).

Marques v. Riverside Military Academy, Inc., 87 Ga. App. 370, 73 S.E. 2d 574 (1952).

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TABLE OF CASES (Continued)

Mitchell v. Consolidated School District No. 201, 17 Wash. 2d 61, 135 P. 2d 79, 14 A.L.R. 612 (1943).

Montana Catholic Missions v. Missoula County, 200 U.S. 118, 26 S.Ct. 197, 50 L.Ed. 398 (1906).

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Mount Ida School v. Gillman, 96 Vt. 13, 116 A. 71 (1922); Subsequent opinion, 97 Vt. 331, 123 A. 198 (1924).

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Nebraska Dist. of Evangelical Lutheran Synod of Missouri v. McKelvie, 104 Neb. 93, 175 N.W. 531, 7 A.L.R. 1688 (1919).

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Otken v. Lamkin, 56 Miss. 758 (1879).

Ottawa University v. Stratton, 85 Kan. 246, 116 P. 892 (1911).

Packer Collegiate Institute v. University of State of New York, 76 N.Y.S. 2d 499 (1940), reversed 298 N.Y. 184, 81 N.E. 2d 81 (1948).

People ex. rel. Tinkoff v. Northwestern University, 333 Ill. App. 224, 77 N.E. 2d 345 (1947), App. trans. 396 Ill. 233, 71 N.E. 2d 156 (1947), cert. den. 335 U.S. 829, 69 S.Ct. 37, 93 L.Ed. 383 (1947).

TABLE OF CASES (Continued)

People v. Am. Socialist Society, 202 App. Div. 640, 195 N.Y.S. 801 (1922).

People v. Leitch, 351 Ill. App. 566, 115 N.E. 2d 917 (1953).

People v. Turner, 121 Cal. App. 2d 861, 263 P. 2d 685 (1953), App. Dism. Turner v. People of State of California, 347 U.S. 972, 74 S.Ct. 785, 98 L.Ed. 1112 (1954).

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Phillips v. Johns, 12 Tenn. App. 354 (1930).

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Pierce v. Society of Sisters, 268 U.S. 610, 45 S.Ct. 571, 69 L.Ed. 1070, 39 A.L.R. 468 (1925).

Pratt Institute v. Boyland, 174 N.Y.S. 2d 112 (1958).

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Reed v. Hollywood Professional School, 169 Cal. App. 2d 887, 338 P. 2d 633 (1959).

Re Pawtucket, 24 R.I. 86, 52 A. 679 (1902).

Rhodes v. State, 76 Ga. App. 667, 47 S.E. 2d 293 (1948).

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Roman Catholic Church, Diocese of Tucson v. Keenan, 74 Ariz. 20, 243 P. 2d 455, amended 74 Ariz. 76, 244 P. 2d 351 (1952).

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TABLE OF CASES (Continued)

Russell v. Town of Hickory, 124 Miss. 628, 87 So. 150 (1921).

St. Hedwig's School v. Cook County, 289 Ill. 432, 124 N.E. 629 (1919).

St. Mary's College v. Crawl, Treas., etc., 10 Kan. 442 (1872).

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Sarah Dix Hamlin School v. City and County of San Francisco, 34 Cal. Rptr. 376 (1963).

Sargent v. Board of Education, 177 N.Y. 317, 69 N.E. 722 (1904).

Scales v. Board of Education of Union Free School Dist. No. 12, Town of Hempstead, 245 N.Y.S. 2d 449 (1963).

School Board Dist. No. 18, Garvin County v. Thompson, 24 Okla. 1, 103 P. 578, 24 L.R.A. (NS) 221, 138 Am. St. Rep. 861, 19 Ann. Cas. 1188 (1909).

School Board of Caldwell Parish v. Meredith, 139 La. 35, 71 S. 209 (1916).

Schulte v. Missionaries of La Salette Corporation of Missouri, 352 S.W. 2d 636 (Mo., 1961).

Scopes v. State, 154 Tenn. 105, 289 S.W. 363, 53 A.L.R. 821 (1927).

Scott v. Scott, 247 Ala. 598, 25 So. 2d 673 (1946).

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TABLE OF CASES (Continued)

Smith v. McCabe, 145 Colo. 129, 358 P. 2d 1 (1960).

Smyth v. Visitors, etc. of Phillips Academy, 154 Mass. 551, 28 N.E. 683 (1891).

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LAW AND THE
NON-PUBLIC SCHOOL

An Abstract of a Dissertation
Presented to
The Faculty of the Graduate College
University of Denver

In Partial Fulfillment
of the Requirements for the Degree
Doctor of Education

by
Gordon R. Werkema
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ABSTRACT

The purpose of this study was to determine the legal status of non-public schools in the United States. The constitutions, statutes, and court records of the fifty states, and the federal government were searched to determine the legal status of non-public schools. For purposes of this study a non-public school was considered a school which was under the immediate operational control of individuals or groups not under the absolute control of the state or its agents.

The study of the extensive background literature and related research indicated that there was a large amount of writing in a variety of sources concerned with non-public schools. The role of the non-public school and an understanding of its place in the American educational scene was a subject of widespread discussion.

The study of state constitutions revealed that there were over 250 provisions in the constitutions of the 50 states related to non-public schools. The provisions in the constitutions concerned with non-public schools varied greatly and pertained to matters such as school finances, special laws, the encouragement of learning, compulsory attendance, freedom of choice, approval of schools, taxation, language requirements, transportation, general welfare, corporate organization, tax exemption, public aid for non-public schools, and other miscellaneous matters.

The study of the state laws revealed that in the statutes of the fifty states there were over 500 provisions directly related to non-public schools. The state statutes varied greatly in the number and content

of statutory references to non-public schools. The provisions in the statutes pertained to matters such as supervision, reports and records, certificates, accreditation standards, language requirements, regulations, compulsory attendance, curriculum requirements, general welfare, health, safety, public aid for non-public schools, incorporation, leasing, flag display, school holidays, real estate, and other miscellaneous matters.

The study of the decisions of the courts of record of the fifty states and the federal jurisdictions revealed over 400 court cases which were directly or indirectly concerned with non-public schools. Two hundred ninety cases were used in the final report of the study. The major points of law enunciated by the courts were summarized. Major points enunciated by the courts were concerned with parental and corporate rights, responsibilities, and liabilities, and state supervision and control of non-public schools. In the final chapter of the study the decisions of 41 state courts and the federal courts were reviewed to determine the extent to which the state courts have approved various types of aid to non-public schools.

The court cases studied revealed that courts have dealt with, among other matters, the rights of parents to choose a school, state requirements for non-public schools, state control over non-public schools, contracts between non-public schools and patrons, charters of non-public schools, liability of the schools, licensing, and zoning regulations, and a variety of matters. The court cases which dealt with public aid to non-public schools were concerned primarily with aid to sectarian institutions, transportation of children, school books for children, tax exemption of real and personal property of non-public schools, tuition payments, leasing arrangements, payments to non-public schools for special services, and various miscellaneous aid matters. More than 130 cases were litigated in the courts which were concerned with aid to non-public schools.